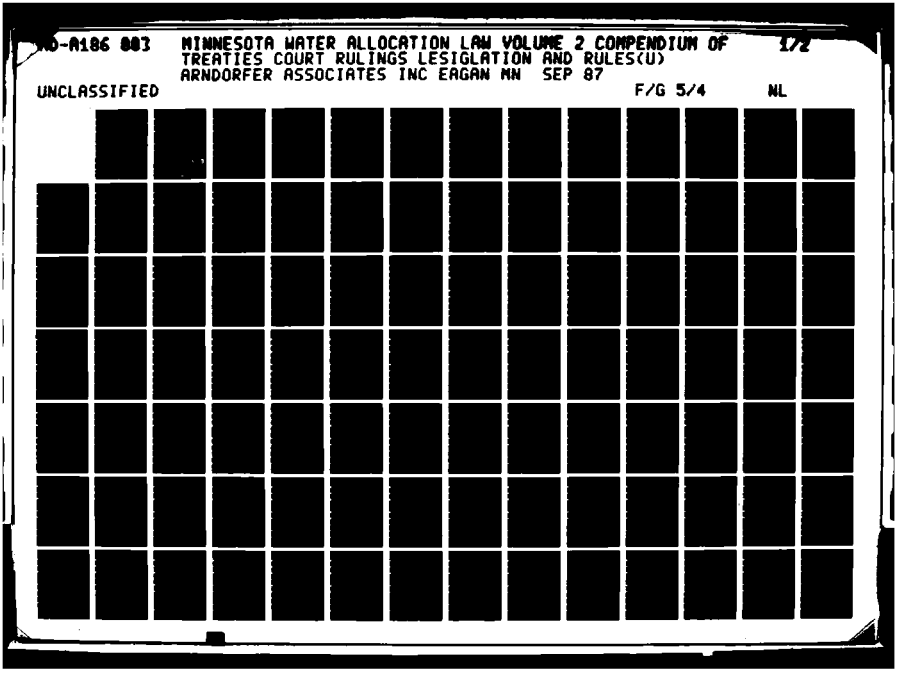
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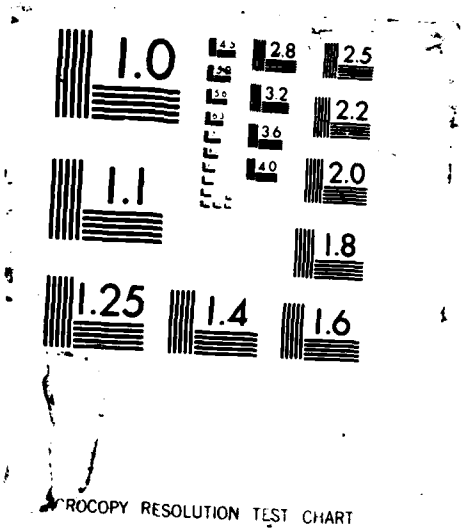
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MINNESOTA WATER ALLOCATION LAW

VOLUME 2

COMPENDIUM OF TREATIES, COURT RULINGS, LEGISLATION AND RULES

Prepared for:

U.S. ARMY CORPS OF ENGINEERS
St. Paul District
1135 U.S. Post Office and Custom House
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September, 1987

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The purpose of this document is to provide a single reference, in two volumes, that provides information pertaining to International, Federal, regional, State, tribal, and local agreements that affect water availability and distribution in Minnesota and all of its political subdivisions.

The study scope is the entire state of Minnesota, as well as examination of existing multi-state agreements. Research included contact with numerous Federal, State, and bi-state agencies.

Volume 2 contains copies of the legislation, rules and regulations pertinent to emergency water planning.

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RULES OF PROCEDURE
OF THE
INTERNATIONAL JOINT COMMISSION

The International Joint Commission, by virtue of the provisions of Article XII of the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909, hereby revokes the Rules of Procedure which it adopted on the 2nd day of February, 1912, as subsequently amended, and, in their place and stead, adopts the following Rules of Procedure:

PART I—GENERAL

DEFINITIONS

1.(1) In the construction of these rules, unless the context otherwise requires, words importing the singular number shall include the plural and words importing the plural number shall include the singular, and:

(2) "applicant" means the Government or person on whose behalf an application is presented to the Commission in accordance with Rule 12;

(3) "Government" means the Government of Canada or the Government of the United States of America;

(4) "person" includes Province, State, department or agency of a Province or State, municipality, individual, partnership, corporation and association, but does not include the Government of Canada or the Government of the United States of America;

(5) "oath" includes affirmation;

(6) "reference" means the document by which a question or matter of difference is referred to the Commission pursuant to Article IX of the Treaty;

(7) "the Treaty" means the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909;

(8) "Canadian section" consists of the commissioners appointed by Her Majesty on the recommendation of the Governor in Council of Canada;

(9) "United States section" consists of the commissioners appointed by the President of the United States.

CHAIRMEN

2.(1) The commissioners of the United States section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the United States Section of the International Joint Commission, and he shall act as chairman at all meetings of the Commission held in the United States and in respect to all matters required to be done in the United States by the chairman of the Commission.

(2) The commissioners of the Canadian section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the Canadian Section of the International Joint Commission, and he shall act as

chairman at all meetings of the Commission held in Canada and in respect to all matters required to be done in Canada by the chairman of the Commission.

(3) In case it shall be impracticable for the chairman of either section to act in any matter the commissioner of such section who is senior in order of appointment shall act in his stead.

PERMANENT OFFICES

3. The permanent offices of the Commission shall be at Washington, in the District of Columbia, and at Ottawa, in the Province of Ontario, and subject to the directions of the respective chairmen acting for their respective sections, the secretaries of the United States and Canadian sections of the Commission shall have full charge and control of said offices, respectively.

DUTIES OF SECRETARIES

4.(1) The secretaries shall act as joint secretaries at all meetings and hearings of the Commission. The secretary of the section of the Commission of the country in which a meeting or hearing is held shall prepare a record thereof and each secretary shall preserve an authentic copy of the same in the permanent offices of the Commission.

(2) Each secretary shall receive and file all applications, references and other papers properly presented to the Commission in any proceeding instituted before it and shall number in numerical order all such applications and references; the number given to an application or reference shall be the primary file number for all papers relating to such application or reference.

(3) Each secretary shall forward to the other for filing in the office of the other copies of all official letters, documents, records or other papers received by him or filed in his office, pertaining to any proceeding before the Commission, to the end that there shall be on file in each office either the original or a copy of all official letters and other papers relating to the said proceeding.

(4) Each secretary shall also forward to the other for filing in the office of the other copies of any letters, documents or other papers received by him or filed in his office which are deemed by him to be of interest to the Commission.

MEETINGS

5.(1) Subject at all times to special call or direction by the two Governments, meetings of the Commission shall be held at such times and places in the United States and Canada as the Commission or the Chairmen may determine and in any event shall be held each year at Washington in April and at Ottawa in October, beginning ordinarily on the first Tuesday of the said months.

(2) If the Commission determines that a meeting shall be open to the public it shall give such advance notices to this effect as it considers appropriate in the circumstances.

SERVICE OF DOCUMENTS

6.(1) Where the secretary is required by these rules to give notice to any person, this shall be done by delivering or mailing such notice to the person at the address for service that the said person has furnished to the Commission, or if no such address has been furnished, at the dwelling house or usual place of abode or usual place of business of such person.

(2) Where the secretary is required by these rules to give notice to a Government, this shall be done by delivering or mailing such notice to the

Secretary of State for External Affairs of Canada or to the Secretary of State of the United States of America, as the case may be.

(3) Service of any document pursuant to Rule 22 shall be by delivering a copy thereof to the person named therein, or by leaving the same at the dwelling house or usual place of abode or usual place of business of such person. The person serving the notice or request shall furnish an affidavit to the secretary stating the time and place of such service.

CONDUCT OF HEARINGS

7. Hearings may be conducted, testimony received and arguments thereon heard by the whole Commission or by one or more Commissioners from each section of the Commission, designated for that purpose by the respective sections or the Chairmen thereof.

DECISION BY THE WHOLE COMMISSION

8. The whole Commission shall consider and determine any matter or question which the Treaty or any other treaty or international agreement, either in terms or by implication, requires or makes it the duty of the Commission to determine. For the purposes of this rule and Rule 7, "the whole Commission" means all of the commissioners appointed pursuant to Article VII of the Treaty whose terms of office have not expired and who are not prevented by serious illness or other circumstances beyond their control from carrying out their functions as commissioners. In no event shall a decision be made without the concurrence of at least four commissioners.

SUSPENSION OR AMENDMENT OF RULES

9. The Commission may suspend, repeal, or amend all or any of the Rules of Procedure at any time, with the concurrence of at least four commissioners. Both Governments shall be informed forthwith of any such action.

GENERAL RULE

10. The Commission may, at any time, adopt any procedure which it deems expedient and necessary to carry out the true intent and meaning of the Treaty.

AVAILABILITY OF RECORDS

11.(1) The following items in the official records of the Commission shall be available for public information at the permanent offices of the Commission:

Applications
References
Public Notices
Press Releases
Statements in Response
Statements in Reply
Records of hearings, including exhibits filed
Briefs and formal Statements submitted at hearings or at other times

(2) Decisions rendered and orders issued by the Commission and formal opinions of any of the Commissioners with relation thereto, shall be available similarly for public information after duplicate originals of the decisions or orders have been transmitted to and filed with the Governments pursuant to Article XI of the Treaty.

(3) Copies of reports submitted to one or both of the Governments pursuant to the Treaty shall be available similarly for public information only with the consent of the Government or Governments to whom the reports are addressed.

(4) Reports, letters, memoranda and other communications addressed to the Commission, by boards or committees created by or at the request of the Commission, are privileged and shall become available for public information only in accordance with a decision of the Commission to that effect.

(5) Except as provided in the preceding paragraphs of this rule, records of deliberations, and documents, letters, memoranda and communications of every nature and kind in the official records of the Commission, whether addressed to or by the Commission, commissioners, secretaries, advisers or any of them, are privileged and shall become available for public information only in accordance with a decision of the Commission to that effect.

(6) A copy of any document, report, record or other paper which under this rule is available for public information may be furnished to any person upon payment of any cost involved in its reproduction.

Part II-Applications

PRESENTATION TO COMMISSION

12 (1) Where one or the other of the Governments on its own initiative seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, it shall present to the Commission an application setting forth as fully as may be necessary for the information of the Commission the facts upon which the application is based and the nature of the order of approval desired.

(2) Where a person seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, he shall prepare an application to the Commission and forward it to the Government within whose jurisdiction such use, obstruction or diversion is to be made, with the request that the said application be transmitted to the Commission. If such Government transmits the application to the Commission with a request that it take appropriate action thereon, the same shall be filed by the Commission in the same manner as an application presented in accordance with paragraph (1) of this rule. Transmittal of the application to the Commission shall not be construed as authorization by the Government of the use, obstruction or diversion proposed by the applicant. All applications by persons shall conform, as to their contents, to the requirements of paragraph (1) of this rule.

(3) Where the Commission has issued an Order approving a particular use, obstruction or diversion, in which it has specifically retained jurisdiction over the subject matter of an application and has reserved the right to make further orders relating thereto, any Government or person entitled to request the issuance of such further order may present to the Commission a request, setting forth the facts upon which it is based and the nature of the further order desired. On receipt of the request, the Commission shall proceed in accordance with the terms of the Order in which the Commission specifically retained jurisdiction. In each case the secretaries shall notify both Governments and invite their comments before the request is complied with.

COPIES REQUIRED

13 (1) Subject to paragraph (3) of this rule, two duplicate originals and fifty copies of the application and of any supplemental application, statement in response, supplemental statement in response, statement in reply and supplemental statement in reply shall be delivered to either secretary. On receipt of such documents, the secretary shall forthwith send one duplicate original and twenty-five copies to the other secretary.

(2) Subject to paragraph (3) of this rule, two copies of such drawings, profiles, plans of survey, maps and specifications as may be necessary to illustrate clearly the matter of the application shall be delivered to either secretary and he shall send one copy forthwith to the other secretary.

(3) Notwithstanding paragraphs (1) and (2) of this rule, such additional copies of the documents mentioned therein as may be requested by the Commission shall be provided forthwith.

AUTHORIZATION BY GOVERNMENT

14 (1) Where the use, obstruction or diversion of waters for which the Commission's approval is sought has been authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority, two copies of such authorization and of any plans approved incidental thereto shall accompany the application when it is presented to the Commission in accordance with Rule 12.

(2) Where such a use, obstruction or diversion of waters is authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority after an application has been presented to the Commission in accordance with Rule 12, the applicant shall deliver forthwith to the Commission two copies of such authorization and of any plans approved incidental thereto.

NOTICE OF PUBLICATION

15 (1) As soon as practicable after an application is presented or transmitted in accordance with Rule 12, the secretary of the section of the Commission appointed by the other Government shall send a copy of the application to such Government.

(2) Except as otherwise provided pursuant to Rule 19, the secretaries, as soon as practicable after the application is received, shall cause a notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion. Subject to paragraph (3) of this rule, the notice shall state that the application has been received, the nature and locality of the proposed use, obstruction or diversion, the time within which any person interested may present a statement in response to the Commission and that the Commission will hold a hearing or hearings at which all persons interested are entitled to be heard with respect thereto.

(3) If the Commission so directs, the notice referred to in paragraph (2) of this rule, appropriately modified, may be combined with the notice of hearing referred to in Rule 24 and published accordingly.

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STATEMENT IN RESPONSE

16 (1) Except as otherwise provided pursuant to Rule 19, a Government and any interested person other than the applicant, may present a statement in response to the Commission within thirty days after the filing of an application. A statement in response shall set forth facts and arguments bearing on the subject matter of the application and tending to oppose or support the application, in whole or in part. If it is desired that conditional approval be granted, the statement in response should set forth the particular condition or conditions desired. An address for service of documents should be included in the statement in response.

(2) When a statement in response has been filed, the secretaries shall send a copy forthwith to the applicant and to each Government except the Government which presented the said statement in response. If so directed by the Commission, the secretaries shall inform those who have presented statements in response, of the nature of the total response.

STATEMENT IN REPLY

17 (1) Except as otherwise provided pursuant to Rule 19, the applicant and, if he is a person, the Government which transmitted the application on his behalf, one or both may present a statement or statements in reply to the Commission within thirty days after the time provided for presenting statements in response. A statement in reply shall set forth facts and arguments bearing upon the allegations and arguments contained in the statements in response.

(2) When a statement in reply has been filed, the secretary shall send a copy forthwith to each Government except the Government which presented the said statement in reply, and to all persons who presented statements in response.

SUPPLEMENTAL OR AMENDED APPLICATIONS AND STATEMENTS

18 (1) If it appears to the Commission that either an application, a statement in response or a statement in reply is not sufficiently definite and complete, the Commission may require a more definite and complete application, statement in response or statement in reply, as the case may be, to be presented.

(2) Where substantial justice requires it, the Commission with the concurrence of at least four Commissioners may allow the amendment of any application, statement in response, statement in reply and any document or exhibit which has been presented to the Commission.

REDUCING OR EXTENDING TIME AND DISPENSING WITH STATEMENTS

19 In any case where the Commission considers that such action would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the Treaty, the Commission may reduce or extend the time for the presentation of any paper or the doing of any act required by these rules or may dispense with the presentation of statements in response and statements in reply.

INTERESTED PERSONS AND COUNSEL

20 Governments and persons interested in the subject matter of an application, whether in favour of or opposed to it, are entitled to be heard in person or by counsel at any hearing thereof held by the Commission.

CONSULTATION

21 The Commission may meet or consult with the applicant, the Governments and other persons or their counsel at any time regarding the plan of hearing, the mode of conducting the inquiry, the admitting or proof of certain facts or for any other purpose.

ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS

22 (1) Requests for the attendance and examination of witnesses and for the production and inspection of books, papers and documents may be issued over the signature of the secretary of the section of the Commission of the country in which the witnesses reside or the books, papers or documents may be, when so authorized by the Chairman of that section.

(2) All applications for subpoena or other process to compel the attendance of witnesses or the production of books, papers and documents before the Commission shall be made to the proper courts of either country, as the case may be, upon the order of the Commission.

HEARINGS

23 (1) The time and place of the hearing or hearings of an application shall be fixed by the Chairmen of the two sections.

(2) The secretaries shall forthwith give written notice of the time and place of the hearing or hearings to the applicant, the Governments and all persons who have presented statements in response to the Commission. Except as otherwise provided by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion of water.

(3) All hearings shall be open to the public.

(4) The applicant, the Governments and persons interested are entitled to present oral and documentary evidence and argument that is relevant and material to any issue that is before the Commission in connection with the application.

(5) The presiding chairman may require that evidence be under oath.

(6) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the applicant, the Governments and the Commission. With the consent of the presiding chairman, counsel for a person other than the applicant may also examine or cross-examine witnesses.

(7) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(8) The Commissioners shall be free to determine the probative value of the evidence submitted to it.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

(10) The hearing of the application, when once begun, shall proceed at the times and places determined by the Chairmen of the two sections to ensure the greatest practicable continuity and dispatch of proceedings.

EXPENSES OF PROCEEDINGS

21 (1) The expenses of those participating in any proceeding under Part II of these rules shall be borne by the participants.

(2) The Commission, after due notice to the participant or participants concerned, may require that any unusual cost or expense to the Commission shall be paid by the person on whose behalf or at whose request such unusual cost or expense has been or will be incurred.

GOVERNMENT BRIEF RE NAVIGABLE WATERS

25 When in the opinion of the Commission it is desirable that a decision should be rendered which affects navigable waters in a manner or to an extent different from that contemplated by the application and plans presented to the Commission, the Commission will, before making a final decision, submit to the Government presenting or transmitting the application a *draft of the decision* and such Government may transmit to the Commission a brief or memorandum thereon which will receive due consideration by the Commission before its decision is made final.

PART III—REFERENCES

PRESENTATION TO COMMISSION

26 (1) Where a question or matter of difference arising between the two Governments involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States of America and Canada is to be referred to the Commission *under Article IX of the Treaty*, the method of bringing such question or matter to the attention of the Commission and invoking its action ordinarily will be as set forth in this rule.

(2) Where both Governments have agreed to refer such a question or matter to the Commission, each Government will present to the Commission, at the permanent office in its country, a reference in similar or identical terms setting forth as fully as may be necessary for the information of the Commission the question or matter which it is to examine into and report upon and any restrictions or exceptions which may be imposed upon the Commission with respect thereto.

(3) Where one of the Governments, on its own initiative, has decided to refer such a question or matter to the Commission, it will present a reference to the Commission at the permanent office in its country. All such references should conform, as to their contents, to *the requirements of* paragraph (2) of this rule.

(4) Such drawings, plans of survey and maps as may be necessary to illustrate clearly the question or matter referred should accompany the reference when it is presented to the Commission.

NOTICE AND PUBLICATION

27 (1) The secretary to whom a reference is presented shall receive and file the same and shall send a copy forthwith to the other secretary for filing in the office of the latter. If the reference is presented by one Government only, the other secretary shall send a copy forthwith to his Government.

(2) Subject to any restrictions or exceptions which may be imposed upon the Commission by the terms of the reference and unless *otherwise provided* by the Commission, the secretaries, as soon as practicable after the reference is received, shall cause a *notice to be published* in the Canada Gazette, the Federal Register and in two newspapers published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference. The notice shall describe the subject matter of the reference in general terms, invite interested persons to inform the Commission of *the nature of their interest* and state that the Commission will provide convenient opportunity for interested persons to be heard with respect thereto.

ADVISORY BOARDS

28 (1) The Commission may appoint a board or boards composed of *qualified persons, to conduct on its behalf investigations* and studies that may be necessary or desirable and to report to the Commission regarding any questions or matters involved in the subject matter of the reference.

(2) Such board ordinarily will have an equal number of members from each country.

(3) The Commission ordinarily will make copies of the main or final report *of* such board or a digest thereof available for examination by the Governments and interested persons prior to holding the final hearing or hearings referred to in Rule 29.

HEARINGS

29 (1) A hearing or hearings may be held whenever in the opinion of the Commission such action would be helpful to the Commission in complying with the terms of a reference. Subject to any restrictions or exceptions which may be imposed by the terms of the reference, a final hearing or hearings shall be held before the Commission reports to Governments in accordance with the terms of the reference.

(2) The time, place and purpose of the hearing or hearings on a reference shall be fixed by the Chairmen of the two sections.

(3) The secretaries shall forthwith give written notice of the time, place and purpose of the hearing or hearings to each Government and to persons who have advised the Commission of their interest. Unless otherwise directed by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette, the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference.

(4) All hearings shall be open to the public, unless otherwise determined by the Commission.

(5) At a hearing, the Governments and persons interested are entitled to present, in person or by counsel, oral and documentary evidence and argument that is relevant and material to any matter that is within the published purpose of the hearing.

(6) The presiding chairman may require that evidence be under oath.

(7) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the Governments and the Commission. With the consent of the presiding chairman, counsel for any interested person may also examine or cross-examine witnesses.

(8) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

PROCEEDINGS UNDER ARTICLE X

30. When a question or matter of difference arising between the two Governments involving the right, obligations or interests of either in relation to the other or to their respective inhabitants has been or is to be referred to the Commission for decision under Article X of the Treaty, the Commission, after consultation with the said Governments, will adopt such rules or procedures as may be appropriate to the question or matter referred or to be referred.

Adopted December 2, 1964.

TREATY
BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING TO BOUNDARY WATERS, AND QUESTIONS ARISING BETWEEN THE UNITED STATES AND CANADA.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE II

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provision now existing with respect thereto, the exclusive jurisdiction and control over the use and flow and waters, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channels of such waters on either side of the boundary resulting in injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE V

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investment which has already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

NOTE. The third, fourth and fifth paragraphs of Article V were terminated by the Canada-United States Treaty of February 27, 1950 concerning the diversion of the Niagara River.

ARTICLE VI

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this Treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation, including the service of canals for the purposes of navigation;

(3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced

to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out the agreement.

ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated

October 18, 1907. Such umpire shall have power to render final decision with respect to those matters and questions so referred on which the Commission fail to agree.

ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpœnas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange

of its ratifications. It shall remain in force for five years dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seal.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRYCE [SEAL]

AND WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to wit:

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Marys river at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Marys river within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty."

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten.

NOW, THEREFORE, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten,

[SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

Wm H Taft

By the President:

P C Knox
Secretary of State

INTERNATIONAL JOINT COMMISSION
CONVENTION AND PROTOCOL
REGULATING THE LEVEL OF LAKE OF THE WOODS
AND THE LEVEL OF RAINY LAKE

CONVENTION AND PROTOCOL

Between His Britannic Majesty in respect of the Dominion of Canada, and the United States, for regulating the level of the Lake of the Woods and of identical letters of reference submitting to the International Joint Commission certain questions as to the regulation of the levels of Rainy Lake and other upper waters.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America,

Desiring to regulate the level of Lake of the Woods in order to secure to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the lake on each side of the boundary between the two countries; and

Accepting as a basis of agreement the recommendations made by the International Joint Commission in its final report of May 18, 1917, on the Reference concerning Lake of the Woods submitted to it by the Governments of Canada and the United States of America,

Have resolved to conclude a Convention for that purpose and have accordingly named as their plenipotentiaries:—

His Britannic Majesty, in respect of the Dominion of Canada: The Honourable Ernest Lapointe, K.C., a Member of His Majesty's Privy Council for Canada and Minister of Justice in the Government of that Dominion; and

The President of the United States of America: Charles Evans Hughes, Secretary of State of the United States;

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:—

Article 1

In the present Convention, the term "level of Lake of the Woods" or "level of the lake" means the level of the open lake unaffected by wind or currents.

The term "Lake of the Woods watershed" means the entire region in which the waters discharged at the outlets of the Lake of the Woods have their natural source.

The term "sea-level datum" means the datum permanently established by the International Joint Commission at the town of Warroad, Minnesota, of which the description is as follows:—

"Top of copper plug in concrete block carried below frost line, and located near fence in front of and to the west of new schoolhouse. Established October 3, 1912. Elevation, sea-level datum, 1068·797."

"The International Joint Commission" means the Commission established under the Treaty signed at Washington on the 11th day of January, 1909, between His Britannic Majesty and the United States of America, relating to boundary waters and questions arising between the United States and Canada.

Article 2

The level of Lake of the Woods shall be regulated to the extent and in the manner provided for in the present Convention, with the object of securing to

the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the lake on each side of the boundary between the two countries for domestic and sanitary purposes, for navigation purposes, for fishing purposes, and for power, irrigation and reclamation purposes.

Article 3

The Government of Canada shall establish and maintain a Canadian Lake of the Woods Control Board, composed of engineers, which shall regulate and control the outflow of the waters of Lake of the Woods.

There shall be established and maintained an International Lake of the Woods Control Board composed of two engineers, one appointed by the Government of Canada and one by the Government of the United States from their respective public services, and whenever the level of the lake rises above elevation 1061 sea-level datum or falls below elevation 1056 sea-level datum the rate of total discharge of water from the lake shall be subject to the approval of this Board.

Article 4

The level of Lake of the Woods shall ordinarily be maintained between elevation 1056 and 1061·25 sea-level datum, and between these two elevations the regulations shall be such as to ensure the highest continuous uniform discharge of water from the lake.

During periods of excessive precipitation the total discharge of water from the lake shall, upon the level reaching elevation 1061 sea-level datum, be so regulated as to ensure that the extreme high level of the lake shall at no time exceed elevation 1062·5 sea-level datum.

The level of the lake shall at no time be reduced below elevation 1056 sea-level datum except during periods of low precipitation and then only upon the approval of the International Lake of the Woods Control Board and subject to such conditions and limitations as may be necessary to protect the use of the waters of the lake for domestic, sanitary, navigation and fishing purposes.

Article 5

If in the opinion of the International Lake of the Woods Control Board the experience gained in the regulation of the lake under Articles 3 and 4, or the provision of additional facilities for the storage of waters tributary to the lake, demonstrates that it is practicable to permit the upper limit of the ordinary range in the levels of the lake to be raised from elevation 1061·25 sea-level datum to a higher level and at the same time to prevent during periods of excessive precipitation the extreme high level of the lake from exceeding elevation 1062·5 sea-level datum, this shall be permitted under such conditions as the International Lake of the Woods Control Board may prescribe. Should such permission be granted, the level at which under Article 3 the rate of total discharge of water from the lake becomes subject to the approval of the International Lake of the Woods Control Board may, upon the recommendation of that Board and with the approval of the International Joint Commission, be raised from elevation 1061 sea-level datum to a correspondingly higher level.

Article 6

Any disagreement between the members of the International Lake of the Woods Control Board as to the exercise of the functions of the Board under Articles 3, 4 and 5 shall be immediately referred by the Board to the International Joint Commission, whose decision shall be final.

ARTICLE 7

The outflow capacity of the outlets of Lake of the Woods shall be so enlarged as to permit the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea-level datum.

The necessary works for this purpose, as well as the necessary works and dams for controlling and regulating the outflow of the water, shall be provided for at the instance of the Government of Canada, either by the improvement of existing works and dams or by the construction of additional works.

ARTICLE 8

A flowage easement shall be permitted up to elevation 1064 sea-level datum upon all lands bordering on Lake of the Woods in the United States, and the United States assumes all liability to the owners of such lands for the costs of such easement.

The Government of the United States shall provide for the following protective works and measures in the United States along the shores of Lake of the Woods and the banks of Rainy river, in so far as such protective works and measures may be necessary for the purposes of the regulations of the level of the lake under the present convention, namely, the removal or protection of buildings injuriously affected by erosion, and the protection of the banks at the mouth of Warroad river where subject to erosion, in so far in both cases as the erosion results from fluctuations in the level of the lake; the alteration of the railway embankment east of the town of Warroad, Minnesota, in so far as it may be necessary to prevent surface flooding of the higher lands in and around the town of Warroad; the making of provision for the increased cost, if any, of operating the existing sewage system of the town of Warroad, and the protection of the waterfront at the town of Baudette, Minnesota.

ARTICLE 9

The Dominion of Canada and the United States shall each on its own side of the boundary assume responsibility for any damage or injury which may have heretofore resulted to it or to its inhabitants from the fluctuations of the level of Lake of the Woods or of the outflow therefrom.

Each shall likewise assume responsibility for any damage or injury which may hereafter result to it or to its inhabitants from the regulation of the level of Lake of the Woods in the manner provided for in the present Convention.

ARTICLE 10

The Governments of Canada and the United States shall each be released from responsibility for any claims or expenses arising in the territory of the other in connection with the matters provided for in Articles 7, 8 and 9.

In consideration, however, of the undertakings of the United States as set forth in Article 8, the Government of Canada shall pay to the Government of the United States the sum of two hundred and seventy-five thousand dollars ($275,000) in currency of the United States. Should this sum prove insufficient to cover the cost of such undertakings one-half of the excess of such cost over the said sum shall, if the expenditure be incurred within five years of the coming into force of the present Convention, be paid by the Government of Canada.

ARTICLE 11

No diversion shall henceforth be made of any waters from the Lake of the Woods watershed to any other watershed except by authority of the United States or the Dominion of Canada within their respective territories and with the approval of the International Joint Commission.

ARTICLE 12

The present Convention shall be ratified in accordance with the Constitutional methods of the High Contracting Parties and shall take effect on the exchange of the ratifications, which shall take place at Washington or Ottawa as soon as possible.

In faith whereof the above named plenipotentiaries have signed the present Convention and affixed their respective seals.

Done in duplicate at Washington, the 24th day of February, 1925.

(Seal) ERNEST LAPOINTE.

(Seal) CHARLES EVANS HUGHES.

Copy

PROTOCOL ACCOMPANYING CONVENTION TO REGULATE THE LEVEL OF LAKE OF THE WOODS

At the moment of signing the Convention between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America, regarding the regulation of the level of Lake of the Woods, the undersigned Plenipotentiaries have agreed as *follows:—*

1

The plans of the necessary works for the enlargement of the outflow capacity of the outlets of Lake of the Woods provided for in Article 7 of the Convention, as well as of the necessary works and dams for controlling and regulating the outflow of the water, shall be referred to the International Lake of the Woods Control Board for an engineering report upon their suitability and sufficiency for the purpose of permitting the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea-level datum. Any disagreement between the members of the International Lake of the Woods Control Board in regard to the matters so referred shall be immediately submitted by the Board to the International Joint Commission whose decision shall be final.

2

Should it become necessary to set up a special tribunal to determine the cost of the acquisition of the flowage easement in the United States provided for in Article 8 of the Convention, the Government of Canada shall be afforded an opportunity to be represented thereon. Should the cost be determined by means of the usual judicial procedure in the United States, the Government of Canada shall be given the privilege of representation by counsel in connection therewith.

3

Since Canada is incurring extensive financial obligations in connection with the protective works and measures provided for in the United States along the shores of Lake of the Woods and the banks of Rainy River, under Article 8 of the Convention, the plans, together with the estimates of cost, of all such protective works and measures as the Government of the United States may propose to construct or provide for within five years of the coming

INTERNATIONAL JOINT COMMISSION
CONVENTION AND PROTOCOL
REGULATING THE LEVEL OF RAINY LAKE
AND OTHER BOUNDARY WATERS

INTERNATIONAL JOINT COMMISSION

In the Matter of Emergency Regulation of the Level of Rainy Lake and of other Boundary Waters in the Rainy Lake Watershed.

ORDER PRESCRIBING METHOD OF REGULATING THE LEVELS OF BOUNDARY WATERS

By the terms of a Convention between the United States of America and Canada signed at Ottawa September 15, 1938, and ratified by His Majesty in respect of Canada on May 19, 1939, and by the President of the United States, with the advice and consent of the Senate, on September 10, 1940, and proclaimed by the President of the United States on October 18, 1940, the International Joint Commission is clothed with power to determine when emergency conditions exist in the Rainy Lake watershed, whether by reason of high or low water, and is empowered to adopt such measures of control as the Commission might deem proper with respect to the existing dams at Kettle Falls and International Falls, and with respect to any other existing or future dams or works in boundary waters of the Rainy Lake watershed, the language of Article 1 of said Convention being as follows:

> "The International Joint Commission, established pursuant to the provisions of the treaty signed at Washington on the 11th day of January, 1909, relating to questions arising between the United States of America and Canada, is hereby clothed with power to determine when emergency conditions exist in the Rainy Lake watershed, whether by reason of high or low water, and the Commission is hereby empowered to adopt such measures of control as to it may seem proper with respect to existing dams at Kettle Falls and International Falls, as well as with respect to any existing or future dams or works in boundary waters of the Rainy Lake watershed, in the event the Commission shall determine that such emergency conditions exist."

And, WHEREAS, the Minnesota and Ontario Paper Company, the Rainy River Improvement Company, and The Ontario-Minnesota Pulp and Paper Company Limited (hereinafter called the Companies) operate and maintain the two existing Kettle Falls Dams across the principal outlets of Namakan Lake and the existing International Falls Dam across Rainy River, the outlet of Rainy Lake; the said Rainy Lake being at a lower level than Namakan Lake, and the said Namakan Lake being one of a series of connecting lakes known as the Namakan Chain of Lakes; and,

WHEREAS, the several lakes comprising the Namakan Chain of Lakes, namely, Little Vermilion, Crane, Sand Point, Kabetogama, and Namakan Lakes, ordinarily stand at substantially the same level, the outflow therefrom and consequently their level being controlled principally by the Companies in operation of the existing Kettle Falls Dams; the said Kabetogama and Crane Lakes being entirely within the United States; and,

WHEREAS, the International Boundary passes through Rainy, Namakan, Sand Point, and Little Vermilion Lakes; and,

WHEREAS, the outflow from and the level of Rainy Lake are generally and customarily determined and controlled by the Companies in the operation of the existing International Falls Dam; and,

WHEREAS, the Companies have artificially regulated the level of Rainy Lake continuously since March 1909, and have artificially regulated the level of Namakan Lake continuously since March 1914; and,

WHEREAS, on the north rim of Namakan Lake a natural high-level outlet, known as the Bear Portage outlet, is now obstructed or partially obstructed by a crude timber and rock-fill barrier which apparently was constructed by the Companies or their predecessors without specific authorization, the effect of this barrier being to cause the Namakan Chain of Lakes occasionally to rise to a somewhat higher stage than would be reached if the barrier were not in existence; and,

WHEREAS, after due notice in each instance, the Commission has held public hearings on the questions raised by said Convention, in the course of which evidence was adduced and all interested parties were given full opportunity to be heard, and those appearing and so desiring were heard; such hearings having been held at St Paul, Minnesota on February 24, 1941; at Hibbing, Minnesota on June 19, 1941; at Fort Frances, Ontario on June 25 and 26, 1941; at Kenora,

Ontario on June 27, 1946; and at International Falls, Minnesota on June 28, 1946; and,

WHEREAS, the Commission and its International Rainy Lake Board of Control have made careful field investigations and technical studies of Rainy Lake and of the several lakes comprising the Namakan Chain of Lakes, and of other boundary waters of the Rainy Lake watershed, and of precipitation and runoff records of the drainage area tributary to Rainy Lake, and of the lands bordering and immediately adjacent to said Lakes and boundary waters in both the United States and Canada, and have given extended consideration to the effects of both extremely high and extremely low lake levels upon the interests of the Companies, which utilize a large part of the flow of the Rainy River to produce power at their International Falls dam for use in their industrial operations at Fort Frances, Ontario and International Falls, Minnesota; and upon the interests of the State of Minnesota, the Province of Ontario, and riparian owners and proprietors; and it appearing to the Commission that:

During the 40-year period, 1909 to 1948 inclusive, the level of Rainy Lake has fluctuated between a minimum elevation of 1098.86 feet above mean sea level (equal to elevation 487.25 feet, Public Works of Canada datum) on April 11, 1909, and a maximum elevation of 1112.51 feet above mean sea level (equal to elevation 500.90 feet, Public Works of Canada datum) on June 8, 1916; and,

During the 37-year period, 1912 to 1948 inclusive, the level of Namakan Lake has fluctuated between a minimum elevation of 1106.18 feet above mean sea level (equal to elevation 494.57 feet, Public Works of Canada datum) on April 13-14, 1923, and a maximum elevation of 1122.86 feet above mean sea level (equal to elevation 511.25 feet, Public Works of Canada datum) on May 23, 1916; and,

Very high levels in Rainy Lake and the Namakan Chain of Lakes during the summer and early autumn of each year are desirable from the viewpoint of the Companies because under such conditions larger volumes of water may be held in storage to augment the production of power at the Companies' International Falls dam during the season of low runoff, and because the elevation of Rainy Lake is determinative, in part, of the power head available at the said International Falls dam; but under such conditions, with Rainy Lake and the Namakan Chain of Lakes at artificially high levels, riparian lands and the shore properties thereon are adversely affected due to erosion and caving banks, fallen trees along the shore, flooding of shore improvements, and the disturbing of established shore lines with attendant unsightly conditions; and,

Very low lake levels result in unsightly and unsanitary conditions, and are otherwise objectionable; and they usually prevail for longer periods of time than do the very high lake levels; and,

High discharges at the Kettle Falls and the International Falls Dams are damaging to all interests affected thereby, including the Companies' power interests; and,

Both extremely high and extremely low levels in Rainy Lake and the Namakan Chain of Lakes are highly objectionable to the large segment of the general public concerned with recreational values in both the United States and Canada; and,

All of the lake elevations referred to or specified in this Order are shown first with reference to mean sea level datum as established at Ranier, Minnesota by the International Boundary Commission in 1913, the description and elevation of the Ranier Benchmark being as follows:

> Ranier, Minnesota, on shore of Rainy Lake, 6 feet back of waters edge; 85 feet west of boat shop, since burned; 150 feet east of mill building covered with metal; 200 feet west of pier in Lake, foot of Main Street; in top of flat outcrop of rock. Bronze tablet stamped (1111) feet.
> Elevation, mean sea-level datum (U.S.C. and G.S. 1912 adjustment) ... 1110.69

-- and are then shown with reference to the arbitrary "Public Works of Canada datum," established at Fort Frances, Ontario about the year 1909 by the Department of Public Works of Canada, the description and elevation of the Fort Frances Benchmark being as follows:

> Fort Frances, Ontario, top of iron bolt set vertically in solid rock 4 feet north of north side of canal, directly beneath the Canadian end of the Minnesota and Ontario Paper Company's bridge; established during construction.

Elevation, arbitrary datum 500.00
Mean sea-level datum
(U.S.C. and G.S. 1912 adjustment) . . 1111.61

And, with the object of securing to the peoples of Canada and the United States the most advantageous use of the waters of Rainy Lake and the Namakan Chain of Lakes for the combined purposes of navigation, sanitation, domestic water supply, power production, recreation, and other beneficial public purposes, it is desirable to formulate and put into effect a definite practicable method or rule for regulation of the levels of said lakes to prevent the occurrence of both extremely high and extremely low levels, and restrict lake fluctuations to a prescribed range, insofar as possible.

WHEREFORE this Commission DETERMINES that:

A. Emergency conditions exist in and along the shores of the Namakan Chain of Lakes when the level of Namakan Lake is higher than elevation 1118.6 feet above mean sea level, excluding the effect of wind and currents, and the inflow at that time is in excess of the total outflow capacity of the present structures at Kettle Falls; emergency conditions also exist when the level of Namakan Lake is lower than elevation 1108.6 feet above mean sea level and the outflow has been reduced to 1000 cfs (cubic feet per second);

B. Emergency conditions exist in and along the shores of Rainy Lake when its level is higher than elevation 1108.1 feet above mean sea level, excluding the effect of wind and currents, and the inflow at that time is in excess of the total outflow capacity of the present structure at International Falls-Fort Frances; emergency conditions also exist when the level of Rainy Lake is lower than elevation 1104.6 feet above mean sea level and the outflow has been reduced to the minimum allowable discharge prescribed by Order of this Commission; and

C. In order to prevent the occurrence of such emergency conditions, it is necessary to anticipate high and low inflows to said lakes insofar as possible and so regulate the outflow at the Kettle Falls Dams and the International Falls-Fort Frances Dam as to avoid as far as possible the occurrence of such conditions.

(Supplementary Order, 29 July 1970)

NOW, THEREFORE THIS COMMISSION DOTH ORDER AND DIRECT THAT:

1.(a) The Companies, their successors or assigns shall operate the discharge facilities at the Kettle Falls Dams as authorized by the International Rainy Lake Board of Control in such manner that insofar as

possible the level of Namakan Lake, as determined at the Kettle Falls-Namakan Lake gauge, will be between the following minimum and maximum elevations on the dates shown or between elevations which can be interpolated therefrom between these dates; these elevations being shown in feet above mean sea level:

NAMAKAN LAKE ELEVATIONS

Date	Minimum	Maximum
1 Jan	1113.6	1115.3
1 Feb	1111.2	1114.1
1 Mar	1110.3	1113.1
1 Apr	1108.6	1112.0
21 Apr	1108.6	1113.1
1 May	1110.2	1113.6
1 Jun	1115.3	1116.6
21 Jun	1117.5	1118.6
1 Jul	1117.6	1118.6
21 Jul	1118.0	1119.6
1 Aug	1118.0	1119.6
1 Sep	1118.0	1118.6
11 Sep	1118.0	1118.6
1 Oct	1117.6	1118.6
1 Nov	1116.3	1117.5
1 Dec	1115.0	1116.4

(b) Whenever the level of Namakan Lake is in excess of 1119.1 feet, as will occur occasionally when flood inflows are in excess of the outflow capacity of the present dams at Kettle Falls, all gates and fish-ways in those dams shall be fully open to ensure the most rapid possible return to the maximum elevation prescribed in sub-paragraph(a).

(c) Whenever the level of Namakan Lake is lower than the minimum elevation prescribed in sub-paragraph(a), as will occur occasionally during periods of deficient inflow, the total outflow from the dams at Kettle Falls shall be reduced to 1000 cfs (cubic feet per second) until the lake level returns to the minimum elevation prescribed in sub-paragraph(a).

(Supplementary Order, 29 July 1970)

2.(a) The Companies, their successors or assigns shall operate the discharge facilities at the International Falls-Fort Frances Dam as authorized by the International Rainy Lake Board of Control in such manner that insofar as possible the level of Rainy Lake, as determined at the gauge on the Department of Public Works, Canada, Five Mile Dock, will be between the following minimum and maximum elevations on the dates shown or between elevations which can be interpolated therefrom between these

dates; these elevations being shown in feet above mean sea level:

RAINY LAKE ELEVATIONS

Date	Minimum	Maximum
1 Jan	1106.4	1107.1
1 Feb	1105.8	1106.6
1 Mar	1105.2	1106.2
1 Apr	1104.6	1105.6
21 Apr	1104.6	1106.2
1 May	1105.1	1106.6
1 Jun	1106.6	1107.6
1 Jul	1107.4	1108.1
1 Aug	1107.4	1108.1
1 Sep	1107.4	1108.1
1 Oct	1107.4	1108.1
11 Oct	1107.4	1108.1
1 Nov	1107.2	1108.1
1 Dec	1105.8	1107.6

(b) Whenever the level of Rainy Lake is in excess of 1108.6 feet, as will occur occasionally when flood inflows are in excess of the outflow capacity of the dam at International Falls-Fort Frances, all gates in that dam shall be fully open to ensure the most rapid possible return to the maximum elevation prescribed in subparagraph(a).

(c) Whenever the level of Rainy Lake is lower than the minimum elevation prescribed in sub-paragraph(a), as will occur occasionally during periods of deficient inflow, the outflow from the dam at International Falls-Fort Frances shall be reduced to the minimum outflow prescribed in sub-

paragraph(d), until the lake level returns to the minimum elevation prescribed in sub-paragraph(a).

(d) The minimum instantaneous outflow from the dam at International Falls-Fort Frances shall be 4000 cfs (cubic feet per second) between the hours of sunrise and sunset in the months of May to October, inclusive, and 3300 cfs at all other times.

(e) The existing barrier which obstructs or partially obstructs the high-level Bear Portage outlet, and which has deteriorated by natural process, shall not be repaired, strengthened, raised, lowered, or otherwise modified in any way by the Companies, their successors or assigns, or by any other corporation or person without specific authorization from this Commission.

(Supplementary Order, 29 July 1970)

3. Notwithstanding Paragraphs numbered 1 and 2 of this Order, if extremely high or low inflows to Namakan Lake or Rainy Lake are anticipated, the International Rainy Lake Board of Control, after obtaining the approval of the Commission, may authorize the levels of Namakan Lake and/or Rainy Lake to be raised temporarily to greater than the

maximum or lowered temporarily to less than the minimum elevations respectively prescribed in Paragraphs numbered 1 (a) and 2 (a) of this Order.

(Supplementary Order, 29 July 1970)

The Commission reserves the right to have the aforementioned Bear Portage barrier removed, or cause its crest to be lowered, in event the Commission shall find at any time that said barrier interferes seriously with the achievement of the objectives of this Order.

The Commission also reserves the right to amend or rescind this Order at any time, and to issue such supplementary or other Orders in the premises as it might deem to be in the public interest; but this Order, from and after the date of its adoption by the Commission, shall be in full force and effect until otherwise ordered by the Commission.

Dated at Crane Lake, Minnesota, this eighth day of June, 1949.

A.O. Stanley
J. Allison Glen
Roger B. McWhorter
Geo. Spence
Eugene W. Weber

Note:

In addition to the amendments of the Order dated 8 June 1949 which are indicated in the foregoing, the

Commission's Supplementary Orders also contain the following provisions which remain in effect:

"B. The Companies shall maintain their control works in the Kettle Falls dams in such manner that changes in the outflow may be made promptly at all times."

(Supplementary Order, 1 October 1957)

"4. All obligations imposed in the said Order dated 8 June 1949, as amended by the said Supplementary Order dated 1 October 1957 and by this Order, upon the Companies, their successors or assigns apply jointly and severally to Boise Cascade Corporation, Minnesota and Ontario Paper Company, Rainy River Improvement Company and The Ontario-Minnesota Pulp and Paper Company Limited."

(Supplementary Order, 29 July 1970)

RIGHTS OF INDIANS

FEDERAL COURT RULINGS

phases of it—are ably dealt with in the opinion of the Court of Claims, and it would be unnecessary repetition to go over the argument or to review the cases.

Judgment affirmed.

WINTERS *v.* THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 158. Argued October 24, 1907. Decided January 6, 1908.

The rule that all the parties must join in an appeal or writ of error unless properly detached from the right so to do applies only to joint judgments and decrees. This court has jurisdiction of an appeal taken or writ of error sued out by one of several defendants if his interest is separate from that of the other defendants.

In a suit against several defendants as trespassers in which some of them defaulted and others answered, *held*, that each defendant was a separate trespasser and that while those who defaulted were precluded from questioning the correctness of the decree entered against them, the answering defendants had nothing in common with the others and could maintain an appeal without them.

In a conflict of implications, the instruments must be construed according to the implication having the greater force; and, in the interpretation of agreements and treaties with Indians, ambiguities should be resolved from the standpoint of the Indians.

In view of all the circumstances of the transaction this court holds that there was an implied reservation in the agreement of May 1, 1888, 25 Stat. 124, with the Gros Ventre and other Indians establishing the Fort Belknap Reservation, of a sufficient amount of water from the Milk River for irrigation purposes, which was not affected by the subsequent act of February 22, 1889, 25 Stat. 676, admitting Montana to the Union, and that the water of that river cannot be diverted, so as to prejudice this right of the Indians, by settlers on the public lands or those claiming riparian rights on that river.

The Government of the United States has the power to reserve waters of a river flowing through a Territory and exempt them from appropriation under the laws of the State which that Territory afterwards becomes.

148 Fed. Rep. 684, affirmed.

THIS suit was brought by the United States to restrain appellants and others from constructing or maintaining dams or reservoirs on the Milk River in the State of Montana, or in any manner preventing the water of the river or its tributaries from flowing to the Fort Belknap Indian Reservation.

An interlocutory order was granted, enjoining the defendants in the suit from interfering in any manner with the use by the reservation of 5,000 inches of the water of the river. The order was affirmed by the Circuit Court of Appeals. 143 Fed. Rep. 740. Upon the return of the case to the Circuit Court, an order was taken *pro confesso* against five of the defendants. The appellants filed a joint and several answer, upon which and the bill a decree was entered making the preliminary injunction permanent. The decree was affirmed by the Circuit Court of Appeals. 148 Fed. Rep. 684.

The allegations of the bill, so far as necessary to state them, are as follows: On the first day of May, 1888, a tract of land, the property of the United States, was reserved and set apart "as an Indian reservation as and for a permanent home and abiding place of the Gros Ventre and Assiniboine bands or tribes of Indians in the State (then Territory) of Montana, designated and known as the Fort Belknap Indian Reservation." The tract has ever since been used as an Indian reservation and as the home and abiding place of the Indians. Its boundaries were fixed and defined as follows (25 Stat. 124):

"Beginning at a point in the middle of the main channel of Milk River, opposite the mouth of Snake Creek; thence due south to a point due west of the western extremity of the Little Rocky Mountains; thence due east to the crest of said mountains at their western extremity, and thence following the southern crest of said mountains to the eastern extremity thereof; thence in a northerly direction in a direct line to a point in the middle of the main channel of Milk River opposite the mouth of People's Creek; thence up Milk River, in the middle of the main channel thereof, to the place of beginning."

Milk River, designated as the northern boundary of the

reservation, is a non-navigable stream. *Large portions of* the lands embraced within the reservation are well fitted and adapted for pasturage and the feeding and grazing of stock, and since the establishment of the reservation the United States and the Indians have had and have large herds of cattle and large numbers of horses grazing upon the land within the reservation, "being and situate along and bordering upon said Milk River." Other portions of the reservation are "adapted for and susceptible of farming and cultivation and the pursuit of agriculture, and productive in the raising thereon of grass, grain and vegetables," but such portions are of dry and arid character, and in order to make them productive require large quantities of water for the purpose of irrigating them. In 1889 the United States constructed houses and buildings upon the reservation for the occupancy and residence of the officers in charge of it, and such officers depend entirely for their domestic, culinary and irrigation purposes upon the water of the river. In the year 1889, and long prior to the acts of the defendants complained of, the United States, through its officers and agents at the reservation, appropriated and took from the river a flow of 1,000 miners' inches, and conducted it to the buildings and premises, used the same for domestic purposes and also for the irrigation of land adjacent to the buildings and premises, and by the use thereof raised crops of grain, grass and vegetables. Afterwards, but long prior to the acts of the defendants complained of, to wit, on the fifth of July, 1898, the Indians residing on the reservation diverted from the river for the purpose of irrigation a flow of 10,000 miners' inches of water to and upon divers and extensive tracts of land, aggregating in amount about 30,000 acres, and raised upon said lands crops of grain, grass and vegetables. And ever since 1889 and July, 1898, the United States and the Indians have diverted and used the waters of the river in the manner and for the purposes mentioned, and the United States "has been enabled by means thereof to train, encourage and accustom large numbers of Indians residing upon the said reservation to habits of industry and to promote their civilization and improvement." It is alleged with detail that all of the waters of the river are necessary for all those purposes and the purposes for which the reservation was created, and that in furthering and advancing the civilization and improvement of the Indians, and to encourage habits of industry and thrift among them, it is essential and necessary that all of the waters of the river flow down the channel uninterruptedly and undiminished in quantity and undeteriorated in quality.

It is alleged that "notwithstanding the riparian and other rights" of the United States and the Indians to the uninterrupted flow of the waters of the river the defendants, in the year 1900, wrongfully entered upon the river and its tributaries above the points of the diversion of the waters of the river by the United States and the Indians, built large and substantial dams and reservoirs, and by means of canals and ditches and waterways have diverted the waters of the river from its channel, and have deprived the United States and the Indians of the use thereof. And this diversion of the water, it is alleged, has continued until the present time, to the irreparable injury of the United States, for which there is no adequate remedy at law.

The allegations of the answer, so far as material to the present controversy, are as follows: That the lands of the Fort Belknap Reservation were a part of a much larger area in the State of Montana, which by an act of Congress, approved April 15, 1874, c. 96, 18 Stat. 28, was set apart and reserved for the occupation of the Gros Ventre, Piegan, Blood, Blackfoot and River Crow Indians, but that the right of the Indians therein "was the bare right of the use and occupation thereof at the will and sufferance of the Government of the United States." That the United States, for the purpose of opening for settlement a large portion of such area, entered into an agreement with the Indians composing said tribes, by which the Indians "ceded, sold, transferred and conveyed" to the United States all of the lands embraced in said area, except Fort Belknap Indian Reservation,

described in the bill. This agreement was ratified by an act of Congress of May 1, 1888, c. 213, 25 Stat. 113, and thereby the lands to which the Indians' title was thus extinguished became a part of the public domain of the United States and subject to disposal under the various land laws, "and it was the purpose and intention of the Government that the said land should be thus thrown open to settlement, to the end that the same might be settled upon, inhabited, reclaimed and cultivated and communities of civilized persons be established thereon."

That the individual defendants and the stockholders of the Matheson Ditch Company and Cook's Irrigation Company were qualified to become settlers upon the public land and to acquire title thereto under the homestead and desert land laws of the United States. And that said corporations were organized and exist under the laws of Montana for the purpose of supplying to their said stockholders the water of Milk River and its tributaries, to be used by them in the irrigation of their lands.

That the defendant, the Empire Cattle Company, is a corporation under the laws of Montana, was legally entitled to purchase, and did purchase, from those who were qualified to acquire them under the desert and homestead land laws of the United States, lands on the Milk River and its tributaries; and is now the owner and holder thereof.

That the defendants, prior to the fifth day of July, 1898, and before any appropriation, diversion or use of the waters of the river or its tributaries was made by the United States or the Indians on the Fort Belknap Reservation, except a pumping plant of the capacity of about 250 miners' inches, without having notice of any claim made by the United States or the Indians that there was any reservation made of the waters of the river or its tributaries for use on said reservation, and believing that all the waters on the lands open for settlement as aforesaid were subject to appropriation under the laws of the United States and the laws, decisions, rulings and customs

of the State of Montana, in like manner as water on other portions of the public domain, entered upon the public lands in the vicinity of the river, made entry thereof at the United States land office, and thereafter settled upon, improved, reclaimed and cultivated the same and performed all things required to acquire a title under the homestead and desert land laws, made due proof thereof, and received patents conveying to them, respectively, the lands in fee simple.

That all of said lands are situated within the watershed of the river, are riparian upon the river and its tributaries, but are arid and must be irrigated by artificial means to make them inhabitable and capable of growing crops.

That for the purpose of reclaiming the lands, and acting under the laws of the United States and the laws of Montana, the defendants, respectively, posted upon the river and its tributaries, at the points of intended diversion, notices of appropriation, stating the means of diversion and place of use, and thereafter filed in the office of the clerk and recorder of the county wherein the lands were situated a copy of the notices, duly verified, and within forty days thereafter commenced the construction of ditches and other instrumentalities, and completed them with diligence and diverted, appropriated and applied to a beneficial use more than 5,000 miners' inches of the waters of the river and its tributaries, or 120 cubic feet per second, irrigating their lands and producing hay, grain and other crops thereon. The defendants and the stockholders of the defendant corporations have expended many thousands of dollars in constructing dams, ditches and reservoirs, and in improving said lands, building fences, and other structures, establishing schools and constructing highways and other improvements, usually had and enjoyed in a civilized community, and that the only supply of water to irrigate the lands is from Milk River. If defendants are deprived of the waters their lands cannot be successfully cultivated, and they will become useless and homes cannot be maintained thereon.

That there are other lands within the watershed of the

Milk River and its tributaries and dependent upon its waters for irrigation upon which large numbers of persons have settled under the land laws of the United States and are irrigating and cultivating the same by means of said waters, and have assisted the defendants "in establishing a civilized community in said country and in building and maintaining churches, schools, villages and other elements and accompaniments of civilization; that said communities consist of thousands of people, and if the claim of the United States and the Indians be maintained, the lands of the defendants and the other settlers will be rendered valueless, the said communities will be broken up and the purpose and object of the Government in opening said lands for settlement will be wholly defeated."

It is alleged that there are a large number of springs on the reservation and several streams from which water can be obtained for stock and irrigation purposes, and particularly these: People's Creek, flowing about 1,000 inches of water; Big Horn Creek, flowing about 1,000 inches; Lodge Pole Creek, flowing about 600 inches of water; Clear Creek, flowing about 300 inches. That all of the waters of these streams can be made available for use upon the reservation, and that it was not the intention of the Government to reserve any of the waters of Milk River or its tributaries. That the respective claims of the defendants to the waters of the river and its tributaries are prior and paramount to the claims of the United States and the Indians, except as to 250 inches used in and around the agency buildings, and at all times there has been sufficient water flowing down the river to more than supply these 250 inches.

And it is again alleged that the waters of the river are indispensable to defendants, are of the value of more than $100,000 to them, and that if they are deprived of the waters "their lands will be ruined, it will be necessary to abandon their homes, and they will be greatly and irreparably damaged, the extent and amount of which damage cannot now be estimated, but will greatly exceed $100,000," and that they will

be wholly without remedy if the claim of the United States and the Indians be sustained.

Mr. Edward C. Day and *Mr. James A. Walsh* for appellants:

The decree is, in fact, separate and severable.

It is not charged that the defendants acted jointly. Neither one is responsible for the acts of the other. In so far as the record shows, the defaulting defendants are not the owners of any lands and are not interested in this suit. *Hancock* v. *Patrick*, 119 U. S. 156; *Forgay* v. *Conrad*, 6 How. 201; *Gilfillan* v. *McKee*, 159 U. S. 303; *City Bank* v. *Hunter*, 129 U. S. 578; *Milner* v. *Meek*, 95 U. S. 252; *Todd* v. *Daniel*, 16 Pet. 521; *Railroad Co.* v. *Johnson*, 15 Wall. 8; *Germain* v. *Mason*, 12 Wall. 261. See also *Hill* v. *Chicago and Evanston Ry. Co.*, 140 U. S. 52; *Basket* v. *Haskell*, 107 U. S. 602; *Louisville & N. A. C.* v. *Pope*, 74 Fed. Rep. 5; *Farmers' Loan & Trust Co.* v. *McClure*, 49 U. S. App. 146; *Mercantile Trust Co.* v. *Adams Express Co.*, 16 U. S. App. 37.

In the agreement with the Indians and the act of Congress, ratifying that agreement, there was no reservation of the waters of Milk River or its tributaries for use on the Fort Belknap Indian Reservation. Nor can it be held that the Indians understood that there was any reservation of the waters of Milk River for use upon the Belknap Reservation, or that they ceded and relinquished to the Government anything less than the absolute title to the lands and all waters thereon to that portion of the former reservation to which they relinquished their claims.

The rule that the treaty must be construed most favorably to the Indians does not apply to this case. Here the controversy is between the United States, as guardian of the Indians, and the appellants who are citizens and grantees of the United States, and the controversy has reference to the titles granted by the United States to them. In such case, the appellants are the public in whose behalf the grants must be construed most strongly. The property granted to them by their

entry upon and settlement of the public lands of the United States, and the appropriation of the waters flowing in the streams upon or adjacent thereto pursuant to the laws, decisions of the courts, rules and customs of the country, is property of which they cannot be deprived without due process of law, and without just compensation.

There is nothing before the court for construction or interpretation, but the plain, unambiguous language of the agreement, and that is so clear that it does not require any construction or interpretation.

The appellants made valid appropriations of the waters of Milk River and its tributaries under the laws, customs and decisions of Montana, and the laws of Congress, and their rights as grantees of the Government are superior to any rights which the Indians may have by reason of the agreement entered into between them and the Government.

The doctrine of riparian rights is not recognized, does not prevail and never was in force in Montana, and the rights of the parties to the use of the waters of Milk River and its tributaries must be construed according to the laws of this State.

Even if the doctrine of riparian rights did prevail, the appellants would be entitled to a reasonable use of the water for the purpose of irrigating their lands, having in view the equitable rights of others.

The right to appropriate water is recognized by the laws of the United States, the laws and decisions of the courts and the customs prevailing in Montana, which are now and were in force in Montana at the time the agreement was made with the Indians, and these appellants have shown that they acquired title to their lands under the grant from the Government and made valid and prior appropriations of the waters to reclaim such lands.

Mr. Assistant Attorney General Sanford and *Mr. Assistant Attorney General Van Orsdel*, with whom *The Solicitor General* and *Mr. A. C. Campbell*, Special Attorney, were on the brief, for appellee:

The decree below adjudging the complainants' right to the flow of the waters of Milk River as against all of the defendants before the court, is a joint decree within the meaning of the rule that all parties against whom a joint judgment or decree is rendered must join in prosecuting a writ of error or appeal, and that if prosecuted by less than the whole number of such parties, without a summons and severance or other equivalent proceeding, the appellate court acquires no jurisdiction of the case and the writ of error or appeal will be dismissed. *Ouings* v. *Kincannon*, 7 Pet. 399; *Masterson* v. *Herndon*, 10 Wall. 416; *Hampton* v. *Rouse*, 13 Wall. 187; *Wilson's Heirs* v. *Insurance Co.*, 12 Pet. 140.

The defect of lack of jurisdiction for want of necessary parties to the appeal was not waived by the final decree entered by the Circuit Court of Appeals upon the merits without objection on that ground. *Union & Planters Bank* v. *Memphis*, 189 U. S. 71, 73.

Under the just and reasonable construction of this agreement with the Indians, considered in the light of all the circumstances and of its express purpose, the Indians did not thereby cede or relinquish to the United States the right to appropriate the waters of Milk River necessary to their use for agricultural and other purposes upon the reservation, but retained this right, as an appurtenance to the land which they retained, to the full extent in which it had been vested in them under former treaties, and the right thus retained and vested in them under the agreement of 1888, at a time when Montana was still a Territory of the United States, could not be divested under any subsequent legislation either of the Territory or of the State.

While the United States may itself abrogate rights granted to the Indians under a treaty with them, it alone has this power, and unless such rights are abrogated by the United States itself by subsequent legislation it is well settled that all

rights acquired by the Indians under the treaty are to be fully protected against invasion by other parties. *The Cherokee Nation* v. *Georgia*, 5 Pet. 1; *United States* v. *Cook*, 19 Wall. 591.

MR. JUSTICE MCKENNA, after making the foregoing statement, delivered the opinion of the court.

A question of jurisdiction is presented by the United States. Five of the defendants named in the bill failed to answer and a decree *pro confesso* was taken against them. The other defendants, appellants here, after the affirmance by the Circuit Court of Appeals of the interlocutory injunction, filed a joint and several answer. On this answer and the bill the case was heard and a decree entered against all of the defendants. From that decree the appellants here appealed to the Circuit Court of Appeals without joining therein the other five defendants. The contention is that the Circuit Court of Appeals had no jurisdiction and that this court has none, because the five defaulting defendants had such interest in the case and decree that they should have joined in the appeal, or proceedings should have been taken against them in the nature of summons and severance or its equivalent.

The rule which requires the parties to a judgment or decree to join in an appeal or writ of error, or be detached from the right by some proper proceeding, or by their renunciation, is firmly established.[1] But the rule only applies to joint judgments or decrees.[2] In other words, when the interest of a de-

[1] *Williams* v. *Bank of United States*, 11 Wheat. 414; *Owings* v. *Kincannon*, 7 Pet. 399; *Heirs of Wilson* v. *Insurance Company*, 12 Pet. 140; *Mussina* v. *Cavazos*, 6 Wall. 355; *Masterson* v. *Herndon*, 10 Wall. 416; *Hampton* v. *Rouse*, 13 Wall. 187; *Simpson* v. *Greeley*, 20 Wall. 152; *Feibelman* v. *Packard*, 109 U. S. 14; *Estis* v. *Trabue*, 128 U. S. 225, 230; *Mason* v. *United States*, 136 U. S. 581; *Dolan* v. *Jennings*, 139 U. S. 385; *Hardee* v. *Wilson*, 146 U. S. 179; *Inglehart* v. *Stansbury*, 151 U. S. 68; *Davis* v. *Mercantile Trust Company*, 152 U. S. 590; *Beardsley* v. *Railway*, 158 U. S. 123, 127; *Wilson* v. *Kiesel*, 164 U. S. 248.

[2] *Todd* v. *Daniel*, 16 Pet. 521, 523; *Germain* v. *Mason*, 12 Wall. 259; *Forgay* v. *Conrad*, 6 How. 201; *Brewster* v. *Wakefield*, 22 How. 118, 129; *Milner* v. *Meek*, 95 U. S. 252; *Basket* v. *Hassell*, 107 U. S. 602, 608; *Hancock* v. *Patrel*, 119 U. S. 156; *City Bank* v. *Hunter*, 129 U. S. 557; *Gilfillan* v. *McKee*, 159 U. S. 303.

fendant is separate from that of other defendants he may appeal without them. Does the case at bar come within the rule? The bill does not distinguish the acts of the defendants, but it does not necessarily imply that there was between them, in the diversion of the waters of Milk River, concert of action or union of interest. The answer to the bill is joint and several, and in effect avers separate rights, interests and action on the part of the defendants. In other words, whatever rights were asserted or admission of acts done by any one defendant had no dependence upon or relation to the acts of any other defendant in the appropriation or diversion of the water. If trespassers at all, they were separate trespassers. Joinder in one suit did not necessarily identify them. Besides, the defendants other than appellants defaulted. A decree *pro confesso* was entered against them, and thereafter, according to Equity Rule 19, the cause was required to proceed *ex parte* and the matter of the bill decreed by the court. *Thomson* v. *Wooster*, 114 U. S. 104. The decree was in due course made absolute, and granting that it might have been appealed from by the defaulting defendants, they would have been, as said in *Thomson* v. *Wooster*, absolutely barred and precluded from questioning its correctness, unless on the face of the bill it appeared manifest that it was erroneous and improperly granted. Their rights, therefore, were entirely different from those of the appellants; they were naked trespassers, and conceded by their default the rights of the United States and the Indians, and were in no position to resist the prayer of the bill. But the appellants justified by counter rights and submitted those rights for judgment. There is nothing, therefore, in common between appellants and the other defendants. The motion to dismiss is denied and we proceed to the merits.

The case, as we view it, turns on the agreement of May, 1888, resulting in the creation of Fort Belknap Reservation. In the construction of this agreement there are certain elements to

be considered that are prominent and significant. The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be adequate without a change of conditions. The lands were arid and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government. The lands ceded were, it is true, also arid, and some argument may be urged, and is urged, that with their cession there was the cession of the waters, without which they would be valueless, and "civilized communities could not be established thereon." And this, it is further contended, the Indians knew, and yet made no reservation of the waters. We realize that there is a conflict of implications, but that which makes for the retention of the waters is of greater force than that which makes for their cession. The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, "and grazing roving herds of stock," or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate? And, even regarding the allegation of the answer as true, that there are springs and streams on the reservation flowing about 2,000 inches of water, the inquiries are pertinent. If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the rights of the Indians. But extremes need not be taken into account. By a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians. And the rule

should certainly be applied to determine between two inferences, one of which would support the purpose of the agreement and the other impair or defeat it. On account of their relations to the Government, it cannot be supposed that the Indians were alert to exclude by formal words every inference which might militate against or defeat the declared purpose of themselves and the Government, even if it could be supposed that they had the intelligence to foresee the "double sense" which might some time be urged against them.

Another contention of appellants is that if it be conceded that there was a reservation of the waters of Milk River by the agreement of 1888, yet the reservation was repealed by the admission of Montana into the Union, February 22, 1889, c. 180, 25 Stat. 676, "upon an equal footing with the original States." The language of counsel is that "any reservation in the agreement with the Indians, expressed or implied, whereby the waters of Milk River were not to be subject of appropriation by the citizens and inhabitants of said State, was repealed by the act of admission." But to establish the repeal counsel rely substantially upon the same argument that they advance against the intention of the agreement to reserve the waters. The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States* v. *The Rio Grande Ditch & Irrigation Co.*, 174 U. S. 690, 702; *United States* v. *Winans*, 198 U. S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, and it would be extreme to believe that within a year Congress destroyed the reservation and took from the Indians the consideration of their grant, leaving them a barren waste—took from them the means of continuing their old habits, yet did not leave them the power to change to new ones.

Appellants' argument upon the incidental repeal of the agreement by the admission of Montana into the Union and the power over the waters of Milk River which the State thereby acquired

to dispose of them under its laws, is elaborate and able, but our construction of the agreement and its effect make it unnecessary to answer the argument in detail. For the same reason we have not discussed the doctrine of riparian rights urged by the Government.

Decree affirmed.

MR. JUSTICE BREWER dissents.

OPINIONS PER CURIAM, ETC., FROM OCTOBER 14, 1907, TO JANUARY 6, 1908.

No. 14. GALBAN AND COMPANY, APPELLANTS, *v.* THE UNITED STATES. Appeal from the Court of Claims. Submitted October 15, 1907. Decided October 21, 1907. *Per Curiam.* Judgment affirmed. *Neely* v. *Henkel*, 180 U. S. 109; *Pearcy* v. *Stranahan*, 205 U. S. 257, and cases cited. See opinion below, 40 C. Cl. 495. *Mr. Barry Mohun*, *Mr. W. W. Dudley* and *Mr. L. T. Michener* for appellants. *The Attorney General* and *Mr. Assistant Attorney General Van Orsdel* for appellee.

No. —, Original. *Ex parte*: IN THE MATTER OF THOMAS B. CLEMENT, PETITIONER. Submitted October 14, 1907. Decided October 21, 1907. Motion for leave to file petition for writ of mandamus denied. *Mr. George N. Baxter* for petitioner. *The Attorney General* opposing.

No. 260. CLARK WOODARD SPRAGUE, SOLE SURVIVING EXECUTOR, ETC., PLAINTIFF IN ERROR, *v.* JACOB BETZ ET UX. In error to the Supreme Court of the State of Washington. Motion to dismiss submitted October 21, 1907. Decided October 28, 1907. *Per Curiam.* Dismissed for the want of jurisdiction. *New Orleans Waterworks Company* v. *Louisiana*, 185 U. S. 336; *Newburyport Water Company* v. *Newburyport*, 193 U. S. 561; and see *Thomas* v. *Provident Loan and Trust Company*, 138 Fed. Rep. 348; *S. C.*, 200 U. S. 618. Case below, 87 Pac. Rep. 916. *Mr. Charles S. Fogg* for plaintiff in error. *Mr. John F. Shafroth* for defendants in error.

623 F.2d 77 (9th Cir. 1980), where the arbitrator found that a newly constructed facility was covered by an existing collective bargaining agreement and the NLRB determined that it was not. *Id.* at 78–79.

Second, any conflict between the NLRB and an arbitrator is necessarily speculative when the arbitrator has yet to rule. The Fifth Circuit addressed this issue in *Ladies' Garment Workers, IAM v. Roland Marine & Mfg. Co.*, 591 F.2d 1184 (5th Cir. 1979), in which it held that a Regional Director's refusal to issue a complaint did not preclude arbitration of the issue. "It is not for this Court to look at what the outcome of arbitration of [the Union] grievance might be in view of the NLRB's decision, our duty is simply to look at the labor agreement and determine whether this is the sort of question which is covered by the arbitration." *Id.* at 1187. *See International Union of Electrical, Radio & Machine Workers v. General Electric Co.*, 407 F.2d 253 (2d Cir. 1968), *cert. denied*, 394 U.S. 904, 89 S.Ct. 1742, 23 L.Ed.2d 217 (1969); *Luckenbach Overseas Corp. v. Curran*, 398 F.2d 403 (2d Cir. 1968). Conflicts between the arbitrator and the NLRB can be resolved when they become manifest in an action to enforce the award. The mere possibility of conflict, however, is no barrier to arbitration. *Carey v. Westinghouse Electric Corp.*, 375 U.S. at 272, 84 S.Ct. at 409; *cf. Waggoner v. R. McGray, Inc.*, 607 F.2d 1229, 1236 (9th Cir. 1979) (district court may enforce arbitration award despite potential conflict with NLRB).

III. *Conclusion*

Because we find the dispute to be within the scope of issues which the parties agreed to arbitrate, we reverse the district court and direct that the grievance be submitted to arbitration. In so ruling, we take no position as to the merits of the dispute; any such judicial determination must await an action to enforce the arbitrator's award.

REVERSED and REMANDED for further proceedings consistent with this opinion.

COLVILLE CONFEDERATED TRIBES, Plaintiff-Appellant,

v.

Boyd WALTON, Jr., et ux., et al., Defendants-Appellees,

and

State of Washington, Intervening Defendant-Appellee.

UNITED STATES of America, Plaintiff-Appellee,

v.

William Boyd WALTON et ux., Defendants-Appellants,

and

State of Washington, Defendant.

UNITED STATES Of America, Plaintiff-Appellee,

v.

William Boyd WALTON, Jr., et ux., Defendants,

and

State of Washington, Defendant-Appellant.

Nos. 79-4297, 79-4309 and 79-4383.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted June 6, 1980.

Decided June 1, 1981.

Action arose from dispute as to rights to water of creek and basin located entirely within boundaries of Indian reservation in the state of Washington. The United States District Court for the Eastern District of Washington, 460 F.Supp. 1320, Marshall A. Neill, Chief Judge, entered a judgment from which appeals were taken. The Court of Appeals, Wright, Circuit Judge, held that (1) when Colville Indian Reservation was created, sufficient appurtenant water was reserved to permit irrigation of all practically irrigable acreage on the reservation, furthermore, there was an implied reservation of water from creek for development and maintenance of replacement fishing grounds, (2) Indian allottee could sell his right to reserved water, and (3) state regulation of water in a nonnavigable water system located on Indian reservation was preempted by creation of the Indian reservation, thus state water permits of non-Indian purchaser of an Indian allotment were of no force and effect.

Reversed in part, affirmed in part, and remanded.

1. Waters and Water Courses ⇐7

Congress has power to reserve unappropriated water for use on appurtenant lands withdrawn from public domain for specific federal purposes and where water is needed to accomplish those purposes, a reservation of appurtenant water is implied.

2. Waters and Water Courses ⇐7

United States acquires a water right vesting on date reservation of unappropriated water was created and superior to rights of subsequent appropriators.

3. Indians ⇐12

An implied reservation of water for an Indian reservation will be found where it is necessary to fulfill purposes of the reservation.

4. Indians ⇐12

Water was reserved when the Colville Reservation was created.

5. Waters and Water Courses ⇐10

Where water is necessary to fulfill very purposes for which a federal reservation was created, it is reasonable to conclude, even in face of Congress' express deference to state water law in other areas, that United States intended to reserve necessary water; however, where water is only valuable for a secondary use of the reservation, there arises a contrary inference that Congress intended, consistent with its other views, that United States would acquire water *in same manner as any other* public or private appropriator.

6. Indians ⇐12

When Colville Indian Reservation was created, sufficient appurtenant water was reserved to permit irrigation of all practically irrigable acreage on the reservation; furthermore, there was an implied reservation of water from creek for development and maintenance of replacement fishing grounds.

7. Indians ⇐12

Where Indians had vested property right in reserved water, they could use it in any lawful manner and subsequent act of government, which provided necessary fingerlings, *making historically intended use* of the water unnecessary did not divest Indians of right to the water, which included right to permit natural spawning of trout.

8. Indians ⇐13(10)

Indian allottees have right to use reserved water. Indian General Allotment Act, § 7, 25 U.S.C.A. § 381.

9. Indians ⇐6

Generally, termination or diminution of Indian rights requires express legislation or a clear inference of congressional intent gleaned from surrounding circumstances and legislative history.

10. Indians ⇐15(1)

Full quantity of water available to Indian allottee may be conveyed to non-Indian purchaser, who acquires a right to water being appropriated by Indian allottee at time title passes and also a right, with a date-of-reservation priority date, to water that he or she appropriates with reasonable diligence after passage of title; however, non-Indian purchaser may not retain right to that quantity of water which is not maintained by continued use. Indian General Allotment Act, § 7, 25 U.S.C.A. § 381.

11. Indians ⇐32

State regulatory authority over tribal reservation may be barred either because it is preempted by federal law, or because it unlawfully infringes on right of reservation Indians to self government

12. Indians ⇐32

A tribe's inherent power to regulate generally the conduct of nonmembers on land no longer owned by, or held in trust for tribe was impliedly withdrawn but tribe retains inherent power to exercise civil authority over conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on health and welfare of the tribe

13. Indians ⇐32

State regulation of water in a nonnavigable water system located on Indian reservation was preempted by creation of the *Indian reservation*, thus, state water permits of non-Indian purchaser of an Indian allotment were of no force and effect

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Richard B. Price, Nansen, Price & Howe, Omak, Wash., for Walton.

Charles B. Roe, Jr., Olympia, Wash., for State of Wash.

Sanford Sagalkin, Washington, D.C., argued; Robert M. Sweeney, Asst. U.S. Atty., Spokane, Wash., for U.S.A.

William H. Veeder, Washington, D.C., for Colville et al.

Appeal from the United States District Court for the Eastern District of Washington.

Before WRIGHT and SKOPIL, Circuit Judges, and CURTIS,* Senior District Judge.

WRIGHT, Circuit Judge:

Rehearing has been granted. The opinion filed on August 30, 1990 is withdrawn and is replaced by this opinion.

The Colville Confederated Tribes initiated this case a decade ago. They sought to enjoin Walton, non-Indian owner of allotted lands, from using surface and ground waters in the No Name Creek basin. The State of Washington intervened, asserting its authority to grant water permits on reservation lands, and the case was consolidated with a separate suit brought by the United States against Walton.

I. BACKGROUND

A.

In 1871 the predecessors of the Colville Confederated Tribes had no treaty with the United States and no reservation.[1] Those Indians were contemporaneously described as "good farmers, [who] raise extensive crops, make good improvements, and own stocks of cattle and horses." [1871] *Report of the Commissioner of Indian Affairs*, 277.

After the Civil War, settlers had begun to encroach on Indian lands. The Farmer in charge at Fort Colville reported that violence was likely unless a reservation was established to protect Indian interests. *Id.* In response to a request from the Commissioner of Indian Affairs, President Grant created the Colville Reservation. Executive Order of July 2, 1872, *reprinted in* 1 Kapler, *Indian Affairs, Laws and Treaties*, 915-16 (2d ed. 1904).[2] Twenty years later, the northern half of the reservation was taken from the Indians and opened for entry and settlement.[3]

In 1906, Congress ratified an agreement with the Colvilles that provided for distribution of reservation lands to the Indians pursuant to the General Allotment Act of 1887, 24 Stat. 388, and for disposition of the remainder by entry and settlement. Act of Mar. 22, 1906, Pub.L. No. 59-61, ch. 1126, 34 Stat. 80. The agreement was effectuated by Presidential proclamation in 1916.[4] 39 Stat. 1778.

In 1917, a row of seven allotments was created in the No Name Creek watershed. Walton, a non-Indian, now owns the middle three, numbers 525, 2371 and 894. He bought them in 1948 from an Indian, not a member of the Tribe, who had begun to irrigate the land by diverting water for 32 acres from No Name Creek. Walton immediately procured a permit from the state to irrigate 65 acres by diverting up to 1 cubic foot per second "subject to existing rights." He now irrigates 104 acres and uses additional water for domestic and stock water purposes.

The United States holds the remaining allotments in trust for the Colville Indians. Allotments 526 and 892 are north of Walton's property and allotments 901 and 903 are south. Allotments 892, 901 and 903 are held for heirs of the original allottees, but the Tribe has a long-term lease. Allotment 526 is beneficially owned by the Tribe.[5]

B.

The No Name Creek is a spring-fed creek flowing south into Omak Lake, which has no outlet and is saline. The No Name hydrological system, consisting of an underground aquifer and the creek, is located entirely on the Colville Reservation.

The aquifer lies under the Indians' northern allotments and the northern tip of Walton's allotment, number 525. No Name Creek *originates* on the southern tip of the Indians' allotment number 802 and flows through Walton's allotments and the Indians' southern allotments.

C.

Salmon and trout were traditional foods for the Colville Indians, but the salmon runs have been destroyed by dams on the Columbia River. *In 1968, the Tribe, with the help* of the Department of the Interior, introduced Lahonton cutthroat trout into Omak Lake. The species thrives in the lake's saline water, but needs fresh water to spawn. The Indians cultivated No Name Creek's lower reach to establish spawning grounds but irrigation use depleted the water flow during spawning season. The federal government has given the Indians fingerlings to maintain the stock of trout.

II. THE CASE BELOW

The trial court found that 1,000 acre feet per year of water were available in No Name Creek Basin in an average year. It calculated the quantity of the Colvilles' reserved water rights on the basis of irrigable acreage. *The court excluded the northern-*most allotment, number 526, because the evidence showed that it was formerly irrigated with the surface waters of Omak Creek, and the Tribe had not demonstrated that water to irrigate it was required from the No Name system.

The trial court determined the Indians had a reserved right to 666.4 acre feet per year of water *from* the No Name Creek Basin. It held that Walton was not entitled to share in the Colvilles' reserved water

* The Honorable Jesse W. Curtis, Senior District Judge for the Central District of California, sitting by designation.

1. The Colville Confederated Tribes included the Methow, Okanogon, Sampoil, Nespelem, Lake, and Colville Tribes. *See Confederated Tribes of the Colville Reservation v. United States*, 4 Ind.Cl.Comm. 151 (1956); 1 Kappler, *Indian Affairs and Treaties*, 915 (2d ed. 1904). In this opinion, they will be referred to as the Tribe or the Colvilles.

2. Indians who did not live on the land reserved for them were compelled to leave valuable tracts on which they had made extensive improvements and move to the reservation. [1872] *Report of the Commissioner of Indian Affairs*, 62.

3. Approximately 1.5 million acres were *returned to the public domain.* Act of July 4, 1892, 27 Stat. 62.

4. The reservation remained open for settlement until 1934, when the Secretary of the Interior "temporarily" withdrew the surplus lands pursuant *to the Reorganization Act.* Congress permanently restored those lands to the beneficial use of the Tribe in 1956. Act of July 24, 1956, Pub.L. No. 84-772, ch. 684, 70 Stat. 626. In passing that Act, Congress acknowledged that the Indians' consent to opening the reservation for settlement was of questionable validity. *See* H.R.Rep. No. 2080, 84th Cong., 2d Sess. 2 (1956).

5. *We assume that none of the Colvilles'* allotments ever passed from Indian ownership.

rights. The trial court found, however, that the Colvilles were irrigating only a portion of the irrigable acres included in its calculation.

Under the district court's findings, in an average year there are 333.6 acre feet per year of water not subject to the Indians' reserved right. There are an additional 237.6 acre feet per year of water to which the Indians have a reserved right, but which they are not currently using. This water is available for appropriation by non-Indians, subject to the Indians' superior right. The court held that Walton had a right to irrigate the 32 acres under irrigation at the time he acquired his land, with a priority date of the actual appropriation of water for that use.

The court also held that the Indians were potentially entitled to use water to propagate trout, but refused to award water for that purpose. It concluded that spawning was unnecessary because fingerlings were provided free by the federal government.

By post-trial motion, the Indians sought permission to use some of their irrigation water for trout spawning. The motion was granted and the Tribe has since pumped aquifer water from their wells into No Name Creek during spawning season.

Finally, the court decided that the state could regulate No Name water not reserved for Indian use.

Walton, the Tribe and the State appeal parts of the decision. *Colville Confederated Tribes v. Walton*, 460 F.Supp. 1320 (E.D. Wash. 1978).[6]

III. THE TRIBE'S WATER RIGHTS

The Colvilles argue they have a right to use the waters of the No Name system under the implied-reservation, or *Winters* doctrine. We first consider the existence and the extent of that right.

A

[1, 2] Congress has the power to reserve unappropriated water for use on appurtenant lands withdrawn from the public domain for specific federal purposes. *United States v. New Mexico*, 438 U.S. 696, 698, 98 S.Ct. 3012, 3013, 57 L.Ed.2d 1052 (1978). Where water is needed to accomplish those purposes, a reservation of appurtenant water is implied. *Id.* at 700, 98 S.Ct. at 3014; *Cappaert v. United States*, 426 U.S. 128, 139, 96 S.Ct. 2062, 2069, 48 L.Ed.2d 523 (1976). The United States acquires a water right vesting on the date the reservation was created, and superior to the rights of subsequent appropriators. *Cappaert*, 426 U.S. at 138, 96 S.Ct. at 2069.

[3] An implied reservation of water for an Indian reservation will be found where it is necessary to fulfill the purposes of the reservation. In *United States v. Winters*, 207 U.S. 564, 576, 28 S.Ct. 207, 211, 52 L.Ed. 340 (1908), the Court found an implied reservation because the land of the Fort Belknap reservation would have been valueless without water. Similarly, an implied reservation was found where water was "essential to the life of the Indian people." *Arizona v. California*, 373 U.S. 546, 599, 83 S.Ct. 1468, 1497, 10 L.Ed.2d 542 (1963).

[4] In those cases, if water had not been reserved, it would have been subject to appropriation by non-Indians under state law. Because the Indians were not in a position, either economically or in terms of their development of farming skills, to compete with non-Indians for water rights, it was reasonable to conclude that Congress intended to reserve water for them.[7]

The Colvilles were in a similar position when their reservation was created. As in *Winters*, the Indians relinquished extensive land and water holdings when the reservation was created. Some gave up valuable tracts with extensive improvements. Note 2, *supra*.

Congress intended to deal fairly with the Indians by reserving waters without which their lands would be useless. *Arizona v. California*, 373 U.S. at 600, 83 S.Ct. at 1497. We hold that water was reserved when the Colville Reservation was created.

B

[5] The more difficult question concerns the amount of water reserved. In determining the extent of an implied reservation of water for a national forest, the Supreme Court held:

> Where water is necessary to fulfill the very purposes for which a federal reservation was created, it is reasonable to conclude, even in the face of Congress' express deference to state water law in other areas, that the United States intended to reserve the necessary water. Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.

United States v. New Mexico, 438 U.S. at 702, 98 S.Ct. at 3015.

[6] We apply the *New Mexico* test here. The specific purposes of an Indian reservation, however, were often unarticulated.[8] The general purpose, to provide a home for the Indians, is a broad one and must be liberally construed.[9] We are mindful that the reservation was created for the Indians, not for the benefit of the government.

To identify the purposes for which the Colville Reservation was created, we consider the document and circumstances surrounding its creation, and the history of the Indians for whom it was created. We also consider their need to maintain themselves under changed circumstances.[10] *See United States v. Winans*, 198 U.S. 371, 381, 25 S.Ct. 662, 664, 49 L.Ed. 1089 (1905).

These factors demonstrate that one purpose for creating this reservation was to provide a homeland for the Indians to maintain their agrarian society. In a similar setting, the Supreme Court agreed with a Master's finding that water was reserved to meet future as well as present needs, and concluded "that the only feasible and fair way by which reserved water for the reservation can be measured is irrigable acreage." *Arizona v. California*, 373 U.S. at

6. The Tribe asked the United States to intervene on its behalf. Instead the Justice Department filed a separate suit against Walton, based on the theory that the Secretary of the Interior has exclusive jurisdiction over all the water on the reservation. The trial court consolidated the proceedings *sua sponte*. The United States filed an appeal from the decision and the Tribe moved "not to be bound" by any ruling on *U.S. v. Walton*, No. 79-4619. The United States has since dropped its appeal and we deny the Tribe's motion.

7. The *Winters* doctrine applies to reservations created by treaty or executive order. *Arizona v. California*, 373 U.S. 546, 598, 83 S.Ct. 1468, 1496, 10 L.Ed.2d 542 (1963).

8. For example, the order creating the Colville reservation read:

> It is hereby ordered that . . . the country bounded on the east and south by the Columbia River, on the west by the Okanogan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

Executive Order of July 2, 1872, *reprinted in* 1 Kappler, *Indian Affairs and Treaties*, 916 (2d ed. 1904). Reservations were commonly created with similar language. *See* U.S. Dept. of the Interior, *Federal Indian Law*, 613-22 (1958). The President's orders responded to requests from officers in the Department of the Interior but it is difficult to identify or to know how much weight to give to their purpose.

9. *See United States v. Winans*, 198 U.S. 371, 381, 25 S.Ct. 662, 664, 49 L.Ed. 1089 (1905). The rule of liberal construction should apply to reservations created by Executive Order. *See Arizona v. California*, 373 U.S. 546, 598, 83 S.Ct. 1468, 1496, 10 L.Ed.2d 542 (1963). Congress envisioned agricultural pursuits as only a first step in the "civilizing" process. *See, e.g.*, 11 Cong.Rec. 905 (1881). This vision of progress implies a flexibility of purpose.

10. *See Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 39 S.Ct. 40, 63 L.Ed. 138 (1918) (exclusive right to fish implied because necessary for self-sustaining community); *United States v. Shoshone Tribe*, 304 U.S. 111, 58 S.Ct. 794, 82 L.Ed. 1213 (1938) (reservation for "absolute and undisturbed use and occupation", includes ownership of minerals and standing timber); *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 406, 88 S.Ct. 1705, 1707, 20 L.Ed.2d 697 (1968) (reservation "for a home" includes hunting and fishing rights); and *United States v. Finch*, 548 F.2d 822, 832 (9th Cir. 1976) (U.S. intended to reserve right of Indians to sustain themselves "from any source of food which might be available").

600-01, 83 S.Ct. at 1497-98. We conclude that, *when the Colville reservation was created*, sufficient appurtenant water was reserved to permit irrigation of all practicably irrigable acreage on the reservation.

Providing for a land-based agrarian society, however, was not the only purpose for creating the reservation. The Colvilles traditionally fished for both salmon and trout. Like other Pacific Northwest Indians, fishing was of economic and religious importance to them. *See Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 665, 99 S.Ct. 3055, 3064, 61 L.Ed.2d 823 (1978); *United States v. Winans*, *supra*; [1871] Report of the Commissioner of Indian Affairs 277.

The Tribe's principal historic fishing grounds on the Columbia River have been destroyed by dams. The Indians have established replacement fishing grounds in Omak Lake by planting a non-indigenous trout.

We agree with the district court that preservation of the tribe's access to fishing grounds was one purpose for the creation of the Colville Reservation. Under the circumstances, we find an implied reservation of water from No Name Creek for the development and *maintenance* of replacement fishing grounds.

We note that the nature of a right to water for a replacement fishery is such that it cannot coexist with continuing rights to water for a fishery in the watershed where the fishery historically existed. Walton does not argue that the tribe has such rights. We affirm the district court's holding that the Colvilles have a reserved right to the quantity of water necessary to maintain the Omak Lake Fishery.

C.

[7] The district court held that water for spawning could not be awarded at this time because the federal government provides the *necessary fingerlings*. We reverse this holding.

The right to water to establish and maintain the Omak Lake Fishery includes the right to sufficient water to permit natural spawning of the trout. When the Tribe has a vested property right in reserved water, it may use it in any lawful manner. As a result, subsequent acts making the historically *intended* use of the water unnecessary do not divest the Tribe of the right to the water.

We recognize that open-ended water rights are a growing source of conflict and uncertainty in the West. Until their extent is determined, state-created water rights cannot be relied on by property owners. *See* Laird, *The Winters Cloud Over the Rockies: Water Rights and the Development of Western Energy Resources*, 7 Am. Indian L.Rev. 15 (1979); Public Land Law Review Commission, *One Third of the Nations Lands*, 144 (1970).

Resolution of the problem is found in quantifying reserved water rights, not in limiting their use. The Special Master in *Arizona v. California* determined that the purposes for which the reservation was created governed the quantification of reserved water, but not the use of such water:

> This [method of quantifying water rights] does not necessarily mean, however, that water reserved for Indian Reservations may not be used for purposes other than agricultural and related uses. The measurement used in defining the magnitude of the water rights is the amount of water necessary for agriculture and related purposes because this was the initial purpose of the reservation, but *the decree establishes a property right which the United States may utilize or dispose of for the benefit of the Indians as the relevant law may allow.*

Report from Simon H. Rifkind, Special master, to the Supreme Court 265-66 (December 5, 1960) (emphasis added).

The Department of the Interior has taken the position that a change of use is permissible. *See* Memorandum from Solicitor of the Department of the Interior to the Secretary of the Interior, February 1, 1964 (use of reserved water for recreation and housing development).

Finally, we note that permitting the Indians to determine how to use reserved water is consistent with the general purpose for the creation of an Indian reservation—providing a homeland for the survival and growth of the Indians and their way of life.

D.

We agree with the district court that water for Allotment 526 *need* not be included in its calculations, since such water is potentially available from Omak Creek.[11] The Indians have not demonstrated that water is unavailable from Omak Creek, or that its use involves significant disadvantages.[12]

IV. THE GENERAL ALLOTMENT ACT OF 1887

We next consider Walton's rights as the fee owner of allotted land, and reverse the district court's judgment that he has no right to reserved water.

A.

The General Allotment Act provided that land on reservations could be allotted for the exclusive use of individual Indians. Remaining land was to be made available for homesteading by non-Indians. After holding allotted lands in trust for individual Indians for a 25-year period, the federal government could convey the land to the allottee in fee, "discharged of said trust and free of all charge or incumbrance whatsoever." 25 U.S.C. § 348.

Because the use of reserved water is not limited to fulfilling the original purposes of the reservation, Congress had the power to allot reserved water rights to individual Indians, and to allow for the transfer of such rights to non-Indians. Whether it did so is a question of congressional intent.

The General Allotment Act represented the shift in federal objectives from segregation of Indians on reservations to assimilation of them in non-Indian culture and society. Its primary sponsor, Senator Dawes, explained that "the quicker [the Indian] is mingled with the whites in every particular the better it will be." Report of the Secretary of the Interior, *Proceedings of Mohonk Lake Conference*, H.R. Exec. Doc. No. 75, 49th Cong., 2d Sess. 992 (1887).

The Act was designed to encourage Indians to become self-supporting citizens by making them landowners. *See generally* H. Otis, *The Dawes Act and the Allotment of Indian Lands* 8-32 (1973). Allotted lands were held in trust for a 25-year period because of

> the desire to protect the Indian against sharp practices leading to Indian landlessness, the desire to safeguard the certainty of titles, and the urge to continue an important basis of governmental activity [on the Indians' behalf].

F. Cohen, *Handbook of Federal Indian Law* 221 (1940); U.S. Department of Interior, *Federal Indian Law* 788-89 (1958).

The only reference to water rights in the Act is found in section 7:

> In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by an riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

25 U.S.C. § 381.

The Act was passed over 20 years before the Supreme Court announced the implied-reservation doctrine in *Winters*. There is nothing to suggest Congress gave any consideration to the transferability of reserved water rights. To resolve this issue, we must determine what Congress would have intended had it considered it.

11. Omak Creek and No Name Creek have no surface connection.

12. The Indians may be deprived of the use of wells drilled on allotment 526 but those were constructed with the understanding that this litigation would be unaffected.

B

[9] It is settled that Indian allottees have a right to use reserved water. *United States v. Powers*, 305 U.S. 527, 59 S.Ct. 344, 83 L.Ed. 330 (1939).[13] "[W]hen allotments were made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." *Id.* at 532, 59 S.Ct. at 346. We must determine whether non-Indian purchasers of allotted lands also obtain a right to some portion of reserved waters.

(1)

[9, 10] The general rule is that termination or diminution of Indian rights requires express legislation or a clear inference of Congressional intent gleaned from the surrounding circumstances and legislative history. *See Bryan v. Itasca County*, 426 U.S. 373, 392-93, 96 S.Ct. 2102, 2112-13, 48 L.Ed.2d 710 (1975); *Mattz v. Arnett*, 412 U.S. 481, 504-05, 93 S.Ct. 2245, 2257-58, 37 L.Ed.2d 92 (1972). Upon careful consideration, we conclude this principle supports the proposition that an Indian allottee may sell his right to reserved water.

The district court's holding that an Indian allottee may convey only a right to the water he or she has actually appropriated with a priority date of actual appropriation reduces the value of the allottee's right to reserved water. We think this type of restriction on transferability is a "diminution of Indian rights" that must be supported by a clear inference of Congressional intent.

By placing allotted lands in trust for 25 years, Congress evinced an intent to protect Indians by preventing transfer of those lands.[14] But there is no basis for an inference that some restrictions survived beyond the trust period. Congress provided for extensions of the trust period, but directed that fee title be conveyed to the allottee when the period expired. We think the fee included the appurtenant right to share in reserved waters, and see no basis for limiting the transferability of that right.

This conclusion is supported by our decision in *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 342 (9th Cir. 1956), *cert. denied*, 352 U.S. 988, 77 S.Ct. 386, 1 L.Ed.2d 367 (1957). *Ahtanum* held that non-Indian purchasers of allotted lands are entitled to "participate ratably" with Indian allottees in the use of reserved water. *See United States v. Adair*, 478 F.Supp. 336 (D.Ore.1979); *United States v. Hibner*, 27 F.2d 909 (D.Idaho 1928).

(2)

In determining the nature of the right acquired by non-Indian purchasers, we consider three aspects of an allottee's right to use reserved waters.

First, the extent of an Indian allottee's right is based on the number of irrigable acres he owns. If the allottee owns 10% of the irrigable acreage in the watershed, he is entitled to 10% of the water reserved for irrigation (i.e., a "ratable share"). This follows from the provision for an equal and just distribution of water needed for irrigation.

A non-Indian purchaser cannot acquire more extensive rights to reserved water than were held by the Indian seller. Thus, the purchaser's right is similarly limited by the number of irrigable acres he owns.

Second, the Indian allottee's right has a priority as of the date the reservation was created. This is the principal aspect of the right that renders it more valuable than the rights of competing water users, and therefore applies to the right acquired by a non-Indian purchaser. In the event there is insufficient water to satisfy all valid claims to reserved water, the amount available to each claimant should be reduced proportionately.

Third, the Indian allottee does not lose by non-use the right to a share of reserved water. This characteristic is not applicable to the right acquired by a non-Indian purchaser. The non-Indian successor acquires a right to water being appropriated by the Indian allottee at the time title passes. The non-Indian also acquires a right, with a date-of-reservation priority date, to water that he or she appropriates with reasonable diligence after the passage of title. If the full measure of the Indian's reserved water right is not acquired by this means and maintained by continued use, it is lost to the non-Indian successor.

The full quantity of water available to the Indian allottee thus may be conveyed to the non-Indian purchaser. There is no diminution in the right the Indian may convey. We think Congress would have intended, however, that the non-Indian purchaser, under no competitive disability vis-a-vis other water users, may not retain the right to that quantity of water despite non-use. *See United States v. Adair*, 478 F.Supp. at 348-49; *United States v. Hibner*, 27 F.2d at 912.

C

The district court's holding that Walton has no right to share in water reserved when the Colville reservation was created is reversed. On remand, it will need to determine the number of irrigable acres Walton owns, and the amount of water he appropriated with reasonable diligence in order to determine the extent of his right to share in reserved water.

V. STATE PERMITS

Finally, we consider Walton's claim to water rights based on state water permits. We hold that the state has no power to regulate water in the No Name System, and the permits are of no force and effect.

A.

[11] State regulatory authority over a tribal reservation may be barred either because it is pre-empted by federal law, or because it unlawfully infringes on the right of reservation Indians to self-government. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583, 65 *Apache Tribe v. Arizona*, 649 F.2d 1274 (9th Cir., 1981). Although these barriers are independent, they are related by the concept of tribal sovereignty. "The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been pre-empted by operation of federal law." *Bracker*, 100 S.Ct. at 2583.

Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.

13. In *Powers*, the federal government had constructed an irrigation project on the Crow Reservation capable of irrigating 20,000 acres. Due to a drought and upstream diversions by respondents (non-Indian successors to Indian allottees), 8,000 acres within the project could not be irrigated.

The government sought an injunction against respondents' diversions. The irrigation project had been completed prior to allotment of respondents' lands. The government argued that the project served to "dedicate and reserve" water for irrigation of the 20,000 acres, and that the rights subsequently acquired by Indian allottees were subject to that reservation.

The Court stated the respondents "succeeded to the interest of the original allottees either by mesne conveyances or by purchase at government sales of deceased allottees' lands." 305 U.S. at 531, 59 S.Ct. at 346. It then recited the government's argument and refuted it, relying in part on section 7 of the Allotment Act, by demonstrating that Indian allottees acquired a right to share in reserved water.

The Court held the government had shown no basis for the injunction, but did not consider "the extent or precise nature of respondents' rights in the waters." 305 U.S. at 533, 59 S.Ct. at 346.

If an Indian allottee's right to reserved water does not pass to his or her successor, there would have been a basis for the injunction. Walton therefore argues that *Powers* holds an allottee's right to reserved water is acquired by his non-Indian successor. The government, however, did not present that issue. The Court rejected the only argument made by the government, *i.e.*, that Indian allottees did not acquire rights to reserved water.

14. The subsequent history of the General Allotment Act demonstrates that this protection was extraordinarily inadequate. By the 1930's approximately 90 million acres out of 140 million acres owned by Indian tribes in 1887 had passed into non-Indian ownership. American Indian Policy Review Commission, Final Report 66-70 (1977). This history, however, has no bearing on congressional intent with regard to water rights in 1887; if anything, it demonstrates Congress intended less protection for Indian rights than the rhetoric of the Act's sponsor would suggest.

Id., *United States v. Mazurie*, 419 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706 (1975)

> The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

United States v. Wheeler, 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed.2d 303 (1978) (citations omitted)

[12] A tribe's inherent power to regulate generally the conduct of non-members on land no longer owned by, or held in trust for the tribe was impliedly withdrawn as a necessary result of its dependent status. *Montana v. United States*, ___ U.S. ___, 101 S.Ct. 1245, 1257, 67 L.Ed.2d 493 (1981). Exceptions to this implied withdrawal exist. A tribe retains the inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the health and welfare of the tribe. *Id.* This includes conduct that involves the tribe's water rights. *See id.* at n. 15.

A water system is a unitary resource. The actions of one user have an immediate and direct effect on other users. The Colvilles' complaint in the district court alleged that the Waltons' appropriations from No Name Creek imperiled the agricultural use of downstream tribal lands and the trout fishery, among other things. *Cf. Montana*, ___ U.S. at ___, 101 S.Ct. at 1259 (complaint did not allege peril to subsistence or welfare of tribe from non-Indian hunting and fishing on fee lands).

Regulation of water on a reservation is critical to the lifestyle of its residents and the development of its resources. Especially in arid and semi-arid regions of the West, water is the lifeblood of the community. Its regulation is an important sovereign power.

Although we need not decide whether this power resides exclusively in the tribe or the federal government, or whether it may be exercised by them jointly, its importance forms the backdrop for our consideration of the pre-emption issue.

B

[13] We hold that state regulation of water in the No Name system was pre-empted by the creation of the Colville Reservation. The geographic facts of this case make resolution of this issue somewhat easier than it otherwise might be. The No Name system is non-navigable and is entirely within the boundaries of the reservation. Although some of the water passes through lands now in non-Indian ownership, all of those lands are also entirely within the reservation boundaries.

The Supreme Court has held that water use on a federal reservation is not subject to state regulation absent explicit federal recognition of state authority. *Federal Power Commission v. Oregon*, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215 (1955).[15] Thus,

> It is a familiar principle of public land law that statutes providing generally for disposal of the public domain are inapplicable to lands which are not unqualifiedly subject to sale and disposition because they have been appropriated for some other purpose. [I]t is enough for the instant case, to recognize that these Acts do not apply to this license, which relates only to the use of waters on reservations of the United States.
>
> 349 U.S. at 448, 75 S.Ct. at 840 (citations omitted)

15. The FPC had licensed construction of a dam on federal property. The lands that would have been flooded were held by the federal government. They had been reserved either as an Indian reservation or for power generation. The flow of the river would have been undiminished below the dam.

This court held the licensee had to obtain state approval because of the state's control over non-navigable waters on the public domain. 211 F.2d 347 (9th Cir. 1951).

The Supreme Court reversed. It held that congressional acts giving the states control of water on the public domain were inapplicable on a federal reservation.

in creating the Colville Reservation, the federal government pre-empted state control of the No Name system.[16]

In *United States v. McIntire*, 101 F.2d 650, 654 (9th Cir. 1934), we held that state water laws are not controlling on an Indian reservation.

> [T]he Montana statutes regarding water rights are not applicable, because Congress at no time has made such statutes controlling in the reservation. In fact, the Montana enabling act specifically provided that Indian lands within the limits of the state, 'shall remain under the absolute jurisdiction and control of the Congress of the United States.'

Identical language appears in the Washington Enabling Act, Ch. 180, 25 Stat. 676, 677 (1889).[17]

We adhere to this holding because we find no indication Congress intended the state to have this power. In a series of Acts culminating in the Desert Lands Act of 1877, ch. 107, 19 Stat. 377, Congress gave the states plenary control of water on the public domain. *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 163-64, 55 S.Ct. 725, 731, 79 L.Ed.2d 1356 (1935). Based on this and other legislation, the Supreme Court concluded that Congress almost invariably defers to state water law when it expressly considers water rights. *United States v. New Mexico*, 438 U.S. 696, 702, 98 S.Ct. 3012, 3015, 57 L.Ed.2d 1052 (1978).

This deference is not applicable to water use on a federal reservation, at least where such use has no impact off the reservation. *FPC v. Oregon*, 349 U.S. at 448, 75 S.Ct. at 840. The usual policy stems in part from the need to permit western states to fashion water rights regimes that are responsive to local needs and in part from the "legal confusion that would arise if federal water law and state water law governed side by side in the same locality." *California v. United States*, 438 U.S. 645, 653-54, 668-69, 98 S.Ct. 2985, 2989-90, 2997-98, 57 L.Ed.2d 1018 (1978).

Neither rationale is applicable here. Where land is set aside for an Indian reservation, Congress has reserved it for federal, as opposed to state needs. Because the No Name System is located entirely within the reservation, state regulation of some portion of its waters would create the jurisdictional confusion Congress has sought to avoid.

Public Law 280, Act of August 15, 1953, 67 Stat. 588, did not delegate this regulatory power to the state. Nor do we perceive the McCarran Amendment, 43 U.S.C. § 666, as expanding the state's regulatory powers over water on a federal reservation.

Finally, we note that the state's interest in extending its water law to the reservation is limited in this case. Tribal or federal control of No Name waters will have no impact on state water rights off the reservation.

Thus, we conclude that Walton's state permits are of no force and effect.

VI. CONCLUSION

On remand, the district court will calculate the respective rights of the parties. To the extent Walton's use of water exceeds his rights and interferes with the rights of the tribe, it will be enjoined.

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED for proceedings in conformance with this opinion. The par-

16. We need not consider what effect the opening of reservation lands for entry and settlement had on the control of water on or appurtenant to such lands. All of the lands here involved were allotted.

17. The state argues that *McIntire* is distinguishable for two reasons. First, it argues the court had already held the waters were reserved. It is clear, however, that the court did not rely on this in holding state water law inapplicable on the reservation.

Second, Washington argues the purchase of allotted lands by a non-Indian "severed any special federal trust status." The lands are still part of the reservation, however. The only mention of water rights in the Allotment Act suggests continued federal control. 25 U.S.C. § 381.

ties will bear their own costs on this appeal.[18]

UNITED STATES of America,
Plaintiff-Appellee,

v.

Carl Brian WILLIS, Defendant-Appellant.

Nos. 79-1769, 79-1770.

United States Court of Appeals,
Ninth Circuit.

Argued Sept. 11, 1980.

Submitted Sept. 26, 1980.

Decided June 5, 1981.

Rehearing Denied Aug. 10, 1981.

Defendant was convicted in United States District Court for the Northern District of California, Robert H. Schnacke, J., of failing to appear for trial and for possession of cocaine with intent to distribute, and he appealed. The Court of Appeals, Choy, Circuit Judge, held that: (1) submission on record for third trial did not constitute waiver of claims of error on evidentiary rulings made in second trial; (2) district court violated defendant's right to confront adverse witness by refusing to allow questioning of the witness about his relationship with defendant's former live-in girl friend; (3) affidavit was sufficient to support warrant to search defendant's apartment; (4) trial court did not abuse its discretion in declaring a mistrial when defendant did not appear for second day of his trial, and thus defendant was not subjected to double jeopardy by retrial; and (5) evidence was sufficient to support defendant's conviction for failing to appear for trial.

Reversed and remanded.

1. Criminal Law ⇐1026

Defendant's submission on record for third trial on one charge filed against him did not, in light of trial judge's assurances that his right to appeal would be preserved, constitute a waiver of claims of error on evidentiary rulings made in second trial.

2. Criminal Law ⇐662(1)

Defendant's right of confrontation was violated by court's refusal to allow him to cross-examine government witness by showing possible bias arising from witness' alleged sexual relationship with defendant's former live-in girl friend, who had provided much information recited in affidavit supporting application for warrant to search defendant's apartment. U.S.C.A.Const. Amend. 6.

3. Searches and Seizures ⇐3.6(1)

Information supplied by defendant's former live-in girl friend was sufficient to support warrant to search defendant's apartment.

4. Criminal Law ⇐867

Declaration of mistrial is committed to sound discretion of trial court; express consideration of alternatives such as continuance is not required.

5. Criminal Law ⇐183

Where defendant did not appear for second day of his trial after having adequate notice that his trial would reconvene that morning, trial court did not abuse its discretion in declaring a mistrial after waiting for two hours and after it was informed

18. We are persuaded of the correctness of our analysis and conclusion concerning the transferability of the water rights involved in this litigation. Nevertheless, we recognize that reasonable minds hold conflicting views. State and federal courts, state and federal agencies responsible in water rights administration, and the numerous Indian tribes, allottees and their transferees, are plagued almost on a daily basis with the problems and uncertainties surrounding the issues discussed in this opinion. This case presents an appropriate vehicle for the Supreme Court to give guidance and stability to an area of great unrest and uncertainty in Western water and land law. A definitive resolution is overdue. The magnitude of the problem cannot be overstated.

stein, 40 App. D. C. 278; Hoyt v. Hoyt, 143 Pa. 693, 22 A. 755, 13 L. R. A. 343, 24 Am. St. Rep. 575.

The bill of complaint will be dismissed.

UNITED STATES v. PARKINS.

District Court, D. Wyoming. October 11, 1926.

No. 1555

1. Indians ⇐12—United States held to have exclusive right to use waters from streams in reservation for benefit of Indians.

Where the United States has not specifically granted to a state any right in the waters of streams within an Indian reservation, created by treaty before the state was admitted, it has the exclusive right to use such waters for the benefit of the Indians of the reservation.

2. Waters and water courses ⇐122—Landowner held without right to divert water from government irrigation system for private use.

A landowner held without right to appropriate to his private use for irrigation purposes water from a creek, most of which comes primarily from a government irrigation system, which uses the creek bed for a distance as a canal to reach customers below.

In Equity. Suit by the United States against George W. Parkins. Decree for the United States.

A. D. Walton, U. S. Atty., of Cheyenne, Wyo.

John J. Spriggs and F. A. Michaels, both of Lander, Wyo., for defendant.

KENNEDY, District Judge. The plaintiff seeks a decree restraining the defendant from diverting water from a certain stream, which relief sought is resisted by the defendant. The principal facts seem to be substantially as follows:

In pursuance of a treaty between the United States and certain Indian tribes, concluded in 1868 and ratified and proclaimed in 1869, the Shoshone or Wind River Indian reservation was established, and thereafter by agreement between the plaintiff and the Indians considerably diminished; the southern portion still being maintained as an Indian reservation. Somewhat later the United States, for its wards, the Indian tribes, perfected an irrigation system within the said Indian reservation, which was and is known as the Wind River irrigation project; its purpose being to furnish irrigation for lands upon the reservation. Such project has been operated for a period of time, and a considerable portion of the lands reclaimed through it. The irrigation system was so constructed that the waters which were taken out of Wind river above or at the upper end of the reservation were, in the course of their transportation through a main canal, run into and through a small stream known as Mill creek, within the reservation, and continued by said canal on the opposite side of said creek, so that the waters introduced and run through the irrigation canal blended with the waters of Mill creek, it being the purpose and plan to use the bed of Mill creek for the twofold purpose of discharging flood waters and carrying waters to canals farther down the stream, where they were conveyed onto other lands for irrigating purposes.

Previous to the construction of the irrigation project, a certain portion of acreage was deeded by the United States to one of its Indian wards, and subsequently by this ward conveyed to the defendant, and later the defendant received by patent an additional acreage which had theretofore been allotted to one of the Indians. The lands of the defendant were given a water right under the Wind river project, and were for a time irrigated through the waters of that project by appropriate laterals from the main ditch. A controversy arose between plaintiff's officials in charge of the irrigation project and the defendant over the payment of operation and maintenance charges, as a result of which, and defendant's failure to pay, the water was subsequently denied him and shut off by the irrigation officials. Some time thereafter the defendant either constructed or made use of a small dam in Mill creek, below its confluence with the irrigation canal, by which he proceeded to divert waters in that creek across the lands of another Indian allottee and onto his own lands, where they were used for irrigation purposes. After a preliminary injunction had been granted by the court in this case, the defendant abandoned the taking of water from Mill creek across the lands of the Indian allottee, and by the construction of a small dam in the creek farther down diverted the waters through a ditch to his lands, where they were used for irrigation purposes, and have been so used intermittently since the commencement of the suit, the purpose of which is to prohibit the further diversion and use by the defendant of the waters from Mill creek.

The defendant has no permit, either from the plaintiff or from the state of Wyoming, for the diversion of water from Mill creek. The testimony shows that the waters of Mill creek, especially through the ordinary irrigation season, before the project was constructed, were small in volume, and that they have been greatly augmented since the construction by the use of the bed of the stream for the discharge of flood waters, and especially by its use for waters carried to lands for irrigation lower down. The volume of the water in Mill creek is also added to materially by the seepage from the main canal.

I am of the opinion that the plaintiff must prevail in this case for four reasons:

[1] First. It is not apparent that the waters in the streams within the Indian reservation were ever specifically granted by the United States to the state of Wyoming, although it is apparently the fact that the Indian service, in promulgating its irrigation project and the officials of the state of Wyoming for the purpose of protecting all landowners who may acquire water rights, have co-operated along the line of taking out water for irrigating purposes with the consent of the state. It must be assumed, however, in the absence of any specific grant, that the government has reserved whatever rights may be necessary for the beneficial use of the government in carrying out its previous treaty rights; those rights having become fixed and established before the act of admission which made Wyoming a sovereign state. The treaty in this case, like all other treaties with the Indians creating reservations, contemplates the use and benefit of the lands within the reservation to its wards, the Indians, which likewise includes the irrigation of those lands, they being arid in character. Winters v. United States, 207 U. S. 564, 28 S. Ct. 207, 52 L. Ed. 340. So far as the issues here are concerned, it would appear that the government, in the establishment of its irrigation project, had a right to the use of the present waters in Mill creek for its Indian wards.

[2] Second. The evidence in the case shows by a strong preponderance that the flow of Mill creek consists primarily of water conveyed as a part of the irrigation project through the bed of the stream to satisfy appropriators farther down and as a result of seepage from the main irrigation canal, and in either event the waters belong to the irrigation project, which in this case makes them the property of the government. Ide v. United States, 263 U. S. 497, 44 S. Ct. 182, 68 L. Ed. 407.

Third. The evidence discloses that the defendant has no right to divert water from Mill creek, by permit granted either by the United States or the state of Wyoming.

Fourth. The evidence further discloses that the defendant has an adequate water right through the Wind River irrigation project for the irrigation of his lands, which he has neglected and refused to take advantage of, by his failure to pay maintenance charges established under that project and affecting all owners of lands using waters similarly. If he has a grievance in this respect, he should seek appropriate relief through the proper forum. This condition establishes clearly a want of equity in the case, so far as the defendant is concerned.

A decree may be entered, perpetually restraining the defendant from the diversion of water from Mill creek for the irrigation of the lands set forth in the bill of complaint.

UNITED STATES v. PARKINS.

District Court, D. Wyoming. October 11, 1926.

No. 1556.

1. Indians ⇐12—Owner of land under government irrigation project in Indian reservation held liable for operation and maintenance charges.

An owner of land in an Indian reservation and under a government irrigation project who received water therefrom for a number of years, when he refused to make further payments on back charges due for operation and maintenance, held liable for such charges for each year, though on his refusal the water was turned off from his land.

2. Indians ⇐32—User of water from government irrigation system on Indian reservation subject to action for recovery of operation and maintenance charges.

The acts of Congress authorizing irrigation projects on Indian reservations and granting power to the Interior Department to regulate the same and apportion the charges for operation and maintenance upon the lands irrigated creates a direct liability, for such charges, which will sustain an action therefor by the United States.

At Law. Action by the United States against George W. Parkins. Judgment for plaintiff.

Albert D. Walton, U. S. Atty., of Cheyenne, Wyo.

F. A. Michaels, of Lander, Wyo., for defendant.

KENNEDY, District Judge. This is an action brought by the plaintiff to recover operation and maintenance charges against the defendant upon lands owned by the defend-

RIGHTS OF INDIANS

UNITED STATES CODE ANNOTATED

CHAPTER 25, INDIANS, SS 13, 450f, AND 450g

Historical Note

Codification. Section is from the Indian Department Appropriation Act, 1910.

Transfer of Functions. For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Library References

Indians ⇐4. C.J.S. Indians §§ 9, 74.

§ 11. Employee or employees to sign approval of tribal deeds

The Secretary of the Interior is hereby authorized to designate an employee or employees of the Department of the Interior to sign, under the direction of the Secretary, in his name and for him, his approval of tribal deeds to allottees, to purchasers of town lots, to purchasers of unallotted lands, to persons, corporations, or organizations for lands reserved to them under the law for their use and benefit, and to any tribal deeds made and executed according to law for any of the Five Civilized Tribes of Indians in Oklahoma.

(Mar. 3, 1911, c. 210, § 17, 36 Stat. 1069.)

Historical Note

Transfer of Functions. For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Cross References

Interest on tribal funds used to defray per capita expense payments, see section 86 of this title.

Library References

Indians ⇐14, 15(2). C.J.S. Indians §§ 28 et seq., 62.

§ 12. Agent to negotiate commutation of annuities

The Commissioner of Indian Affairs is hereby authorized to send a special Indian agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper.

(Apr. 30, 1908, c. 153, 35 Stat. 73.)

Historical Note

Transfer of Functions. For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Indian Agents. The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

Library References

Indians ⇐4. C.J.S. Indians §§ 9, 74.

Notes of Decisions

Power of Congress 1
Ratification by Congress 2

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1. Power of Congress

Congress had the right to commute perpetual annuities granted to Indian tribes by treaty even without consent of the tribes. Pottawatomie Tribe of Indians v. U. S., 1953, 111 F.Supp. 256, 125 Ct.Cl. 60.

Even if living individual Indians did not have the right to cut off future members of tribe by agreeing to commutation of perpetual annuities granted tribes by treaty with United States to lump sum payment, Congress had power to do so. Id.

2. Ratification by Congress

Where Congress knew that agreement with Indian tribes to commute perpetual annuities granted them by treaty to lump sum payment had not been signed on authority of general counsel of tribe but by individual members, that some signatures had been witnessed by only one man, and that thumb print of tribal member had not been affixed to some of authorizations, such irregularities were cured by ratification of agreement by Congress. Pottawatomie Tribe of Indians v. U. S., 1953, 111 F.Supp. 256, 125 Ct.Cl. 60.

When agreement with Indian tribes to commute perpetual annuities granted tribes by treaty to a lump sum payment was ratified by Congress, agreement was final and binding in absence of duress, mistake, fraud, or the like. Id.

§ 13. Expenditure of appropriations by Bureau of Indian Affairs

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

Notwithstanding any other provision of this section or any other law, postsecondary schools administered by the Secretary of the Interior for Indians, and which meet the definition of an "institution of higher education" under section 1201 of the Higher Education Act of 1965 [20 U.S.C.A. § 1141], shall be eligible to participate in and receive appropriated funds under any program authorized by the Higher Education Act of 1965 [20 U.S.C.A. § 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(Nov. 2, 1921, c. 115, 42 Stat. 208; Oct. 12, 1976, Pub.L. 94–482, Title IV, § 410, 90 Stat. 2233.)

Historical Note

References in Text. The Higher Education Act of 1965, referred to in text, is Pub.L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (section 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, and Tables volume.

1976 Amendment. Pub.L. 94–482 added provisions relating to postsecondary schools administered by the Secretary of the Interior for Indians.

Effective Date of 1976 Amendment. Amendment by Pub.L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub.L. 94–482, set out as an Effective Date of 1976 Amendment note under section 1001 of Title 20, Education.

Transfer of Functions. For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Limitations on Authorization of Appropriations to Carry out Specified Indian Education Programs for Fiscal Years 1982, 1983, and 1984. Pub.L. 97–35, Title V, § 518, Aug. 13, 1981, 95 Stat. 449, provided that: "The total amount of appropriations—

"(1) to carry out the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act [sections 452 to 457 of this title];

"(2) to carry out all education programs under the direction of the Office of Indian Education Programs in the Bureau of Indian Affairs of the Department of the Interior authorized under the Act of November 2, 1921, commonly referred to as the Snyder Act [this section] (and not otherwise expressly authorized by law);

"(3) to carry out the Navajo Community College Act [sections 640a to 640c–2 of this title]; and

"(4) to carry out the Tribally Controlled Community College Assistance Act of 1978 [see Short Title note set out under section 1801 of this title];

shall not exceed $262,300,000 for fiscal year 1982, $276,100,000 for the fiscal year 1983, and $290,400,000 for fiscal year 1984."

Alternative Methods for Equitable Distribution of Supplemental Program Funds; Development, Publication, Etc., of Formula. Pub.L. 95–561, Title XI, § 1102, Nov. 1, 1978, 92 Stat. 2316, provided that:

"(a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplement program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act [this section], for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act [sections 452 to 457 of this title], and shall publish in the Federal Register by March 1, 1979, such alternatives for the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the Secretary shall conduct a field survey listing all alternative formula.

"(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, but vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary."

Payments for Basic Educational Support Grants or Contracts; Authorization; Time. Pub.L. 95–561, Title XI, § 1103(a), Nov. 1, 1978, 92 Stat. 2316, as amended by Pub.L. 96–46, § 2(b)(1), Aug. 6, 1979, 93 Stat. 341, provided that payments for basic educational support grants or contracts for fiscal year 1978, including any fiscal year 1978 funds subsequently obligated in fiscal year 1979, were to be made under the authority of Act Apr. 16, 1934 [sections 452 to 457 of this title], and set forth conditions, time, etc., for payments.

Legislative History. For legislative history and purpose of Pub.L. 94–482, see 1976 U.S. Code Cong. and Adm.News, p. 4713.

Cross References

Attorney fees and expenses in Indian child custody proceedings paid from funds appropriated pursuant to this section, see section 1912 of this title.

Authorization of appropriations pursuant to this section for funding Indian child and family service programs, see section 1933 of this title.

Authorization of supplementary funds for federal grant-in-aid programs under Appalachian Regional Development Act, see section 214 of the Appendix to Title 40, Public Buildings, Property, and Works.

Contracts by Secretary with tribal organizations, see section 450f of this title.

Grants to tribal organizations or tribes by Secretary of funds appropriated under this section, see section 450h of this title.

Grants by Secretary to Menominee Tribe of Wisconsin pursuant to funds appropriated under this section, see section 903a of this title.

Participation of Wyandotte, Ottawa, Peoria, and Modoc Tribes of Oklahoma in programs under this section, see section 861c of this title.

Code of Federal Regulations

Contract financing, see 41 CFR 14H–30.213 et seq.

Housing improvement program, see 25 CFR 256.1 et seq.

Indian fishing on Hoopa Valley Indian Reservation, see 25 CFR 250.1 et seq.

Indian health, see 42 CFR 36.1 et seq.

Policies and procedures pertaining to financial assistance programs for Indians, see 25 CFR 20.1 et seq.

Procurement by negotiation, see 41 CFR 14H–3.210 et seq.

Restrictions on federal financial assistance provided by Department of Interior, see 43 CFR Appendix.

Library References

Indians ⇐4, 6.

C.J.S. Indians §§ 9, 20 et seq., 74.

Notes of Decisions

§ 450e. Wage and labor standards and preference requirements for contracts or grants

(a) All laborers and mechanics employed by contractors of[1] subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended [40 U.S.C.A. § 276a et seq.]. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of Title 40.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, sections 452 to 457 of this title, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

(Pub.L. 93-638, § 7, Jan. 4, 1975, 88 Stat. 2205.)

[1] So in original. Probably should be "or".

Historical Note

References in Text. This Act, referred to in text, is the Indian Self-Determination and Education Assistance Act, which is Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables volume.

The Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended, referred to in subsec. (a), is Act Mar. 3, 1931, c. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

The Act of March 3, 1921, referred to in subsec. (a), probably means the Act of March 3, 1931, c. 411, 46 Stat. 1494, as amended, known as the Davis-Bacon Act. See note above.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

Codification. This section was not enacted as part of Title I of Pub.L. 93-638, which comprises this subchapter.

Legislative History. For legislative history and purpose of Pub.L. 93-638, see 1974 U.S. Code Cong. and Adm. News, p. 7775.

Cross References

Applicability of this section to vocational rehabilitation services grants, see section 750 of Title 29, Labor.

Indian preference laws as not including provisions of this section, see section 2011 of this title.

Code of Federal Regulations

Applicability of this section to contract programs for Indian tribes, see 34 CFR 408.202.

Competitive awards, see 34 CFR 408.204.

Contracting with Indian organizations under Indian Self-Determination and Education Assistance Act, see 41 CFR 14H-70.000 et seq.

Preference requirements for award of contracts and employment to Indians, see 34 CFR 250.5.

Library References

Labor Relations ⇨1132. C.J.S. Labor Relations § 1042.

Notes of Decisions

1. **Construction with other laws**

Preference to Indian-owned firms in award of subcontracts, as required by subsec. (b)(2) of this section, is not satisfied by compliance with section 47 of this title. 1980, 59 Comp. Gen. 739.

2. **Subcontracts**

Subsec. (b)(2) of this section requires federal agency to include in prime contract, for benefit of Indians, a provision requiring contractor to afford preference to Indian-owned firms in award of subcontracts, to greatest extent feasible. 1980, 59 Comp. Gen. 739.

3. **Factors determining grant of preference—Generally**

Under this section, which states that any grant for benefit of Indians requires that, to the greatest extent feasible, preferences are to be given to Indians, a recipient of such a grant, in determining whether awarding of that preference is feasible, is permitted to take other conditions of the grant into consideration. Johnson v. Central Valley School Dist. No. 356, Wash.1982, 645 P.2d 1086.

4. **—— Qualifications of non-Indians**

Preference provided for in this section, which stated that any grant for benefit of Indians required that, to greatest extent feasible, preferences were to be given to Indians, did not entitle teacher of Native American heritage to have school district give him preference over a better qualified non-Indian in filling tutor-counselor position which was funded under federal grant intended to improve learning abilities and opportunities of Indian children. Johnson v. Central Valley School Dist. No. 356, Wash.1982, 645 P.2d 1088.

§ 450f. Contracts by Secretary of the Interior with tribal organizations

(a) Request by tribe for contract by Secretary to plan, conduct and administer education, etc., programs; refusal of request

The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in sections 452 to 457 of this title, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under sections 13 and 52a of this title, and any Act subsequent thereto: ***Provided, however,*** That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed

project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Procedure upon refusal of request to contract

Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) Procurement of liability insurance by tribe as prerequisite to exercise of contracting authority by Secretary; required policy provisions

The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this subchapter to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

(Pub.L. 93-638, Title I, § 102, Jan. 4, 1975, 88 Stat. 2206.)

Historical Note

References in Text. Section 52a of this title, referred to in subsec. (a), was repealed by Pub.L. 92-310, Title II, § 229(c)(2), June 6, 1972, 86 Stat. 208.

This subchapter, referred to in subsec. (c), in the original read "this title", meaning title I of Pub.L. 93-638, which enacted sections 450f to 450n of this title and section 2204b of Title 42, The Public Health and Welfare, and amended section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense. For complete classification of Title I to the Code see Short Title note set out under section 450 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 93-638, see 1974 U.S. Code Cong. and Adm.News, p. 7775.

Cross References

Administration of land and natural resources held in trust for Passamaquoddy Tribe and Penobscot Nation under terms agreed to by the Secretary in accordance with this section, see section 1724 of this title.

Ability of tribal organization to administer food stamp program as evidenced by administration of programs under this subchapter, see section 2020 of Title 7, Agriculture.

Applicability of this section to vocational rehabilitation services grants, see section 750 of Title 29, Labor.

Assistance to Indian tribes in carrying out contracts and grants under this section by assignment of Public Health Service officers, see section 2004b of Title 42, The Public Health and Welfare.

Vocational education contracts subject to terms and conditions of this section, see section 2303 of Title 20, Education.

Code of Federal Regulations

Additional factors for declining to contract, see 34 CFR 408.212.

Applicability of this section to contract programs for Indian tribes, see 34 CFR 408.202.

Contracts under Indian Self-Determination and Education Assistance Act, see 25 CFR 271.1 et seq., 41 CFR 14H-70.000 et seq.

Eligible applicants, see 34 CFR 408.205.

Hearing by Secretary after declining to enter into contract, see 34 CFR 408.213.

Technical review criteria, see 34 CFR 408.211.

§ 450g. Contracts by Secretary of Health and Human Services with tribal organizations

(a) Request by tribe for contract by Secretary to implement hospital and health facility functions, authorities, and responsibilities; refusal of request

The Secretary of Health and Human Services is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C.A. § 2001 et seq.]. *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health and Human Services, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Procedure upon refusal of request to contract

Whenever the Secretary of Health and Human Services declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) Procurement of liability insurance by tribe as prerequisite to exercise of contracting authority by Secretary; required policy provisions

The Secretary of Health and Human Services is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this subchapter to obtain adequate liability insurance *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance

(Pub.L. 93-638, Title I, § 103, Jan. 4, 1975, 88 Stat. 2206, Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

Historical Note

References in Text. The Act of August 5, 1954, as amended, referred to in subsec. (a), is Act Aug. 5, 1954, c. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (section 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables volume.

This subchapter referred to in subsec. (c), in the original read "this title", meaning Title I of Pub.L. 93-638, which enacted sections 450f to 450n of this title and section 2004b of Title 42, The Public Health and Welfare, amended section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense. For complete classification of Title I to the Code, see Short Title note set out under section 450 of this title, and Tables volume.

Change of Name. "Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in text pursuant to section 509(b) of Pub.L. 96-88, which is classified to section 3508(b) of Title 20, Education.

Legislative History. For legislative history and purpose of Pub.L. 93-638, see 1974 U.S. Code Cong. and Adm. News, p. 7775.

Cross References

Ability of tribal organization to administer food stamp program as evidenced by administration of programs under this subchapter, see section 2020 of Title 7, Agriculture.

Assistance to Indian tribes in carrying out contracts and grants under this section by assignment of Public Health Service officers, see section 2004b of Title 42, The Public Health and Welfare.

Vocational education contracts subject to terms and conditions of this section, see section 2303 of Title 20, Education.

Code of Federal Regulations

Contracts under Indian Self-Determination Act, see 41 CFR 3-4.6000 to 3-4.6014, 14H-70.000 et seq., 42 CFR 36.201 to 36.237.

Library References

Indians ⇨24

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§ 450h. Grants to tribal organizations or tribes

(a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to sections 13 and 52a of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450f of this title and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided,* That in the case of land within reservation boundaries *or which adjoins* on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) Grants by Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions

The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 450k of this title, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450g of this title.

(c) Use as matching shares for other similar Federal grant programs

The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be

MINNESOTA STATUTES

CHAPTER 105, WATER RESOURCES, CONSERVATION

105.21 [Repealed, 1947 c 143 s 67]
105.22 [Repealed, 1947 c 143 s 67]
105.23 [Repealed, 1947 c 143 s 67]
105.24 [Repealed, 1947 c 143 s 67]
105.25 [Repealed, 1947 c 143 s 67]
105.26 [Repealed, 1947 c 143 s 67]
105.27 [Repealed, 1947 c 143 s 67]
105.28 [Repealed, 1947 c 143 s 67]
105.29 [Repealed, 1947 c 143 s 67]
105.30 [Repealed, 1947 c 143 s 67]
105.31 [Repealed, 1947 c 143 s 67]
105.32 [Repealed, 1947 c 143 s 67]
105.33 [Repealed, 1947 c 143 s 67]
105.34 [Repealed, 1947 c 143 s 67]
105.35 [Repealed, 1947 c 143 s 67]
105.36 [Repealed, 1947 c 143 s 67]

WATER RESOURCES, CONSERVATION

105.37 DEFINITIONS.

Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words and terms, for the purposes of sections 105.37 to 105.55, shall have the meanings subjoined to them.

Subd. 2. "Commissioner" means the commissioner of natural resources of the state of Minnesota.

Subd. 3. "Division" means the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 4. "Director" means the director of the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 5. "Appropriating" includes but is not limited to "taking", regardless of the use to which the water is put.

Subd. 6. [Repealed, 1979 c 199 s 17]

Subd. 7. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters.

Subd. 8. "Abandon" means to give up the use and maintenance of the described structures or improvements to realty and to surrender the same to deterioration, without reference to any intent to surrender or relinquish title to or possessory interest in the real property constituting the site of the structures or improvements. "Abandoned" and "abandonment" have meanings consistent with this definition of "abandon".

Subd. 9. "Waterbasin" means an enclosed natural depression with definable banks capable of containing water which may be partly filled with waters of the state and which is discernible on aerial photographs.

Subd. 10. "Natural watercourse" means any natural channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

Subd. 11. "Altered natural watercourse" means a former natural watercourse which has been affected by man made changes in straightening, deepening, narrowing, or widening of the original channel.

Subd. 12. "Artificial watercourse" means a watercourse which has been artificially constructed by man where there was no previous natural watercourse.

Subd. 13. "Meandered lakes" means all bodies of water except streams lying within the meander lines shown on plats made by the United States General Land Office.

Subd. 14. "Public waters" includes and shall be limited to the following waters of the state:

(a) All water basins assigned a shoreland management classification by the commissioner pursuant to section 105.485, except wetlands less than 80 acres in size which are classified as natural environment lakes;

(b) All waters of the state which have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(c) All meandered lakes, except for those which have been legally drained;

(d) All waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(e) All waterbasins designated as scientific and natural areas pursuant to section 84.033;

(f) All waterbasins located within and totally surrounded by publicly owned lands;

(g) All waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(h) All waterbasins where there is a publicly owned and controlled access which is intended to provide for public access to the water basin; and

(i) All natural and altered natural watercourses with a total drainage area greater than two square miles, except that trout streams officially designated by the commissioner shall be public waters regardless of the size of their drainage area.

The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water which was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

For the purposes of statutes other than sections 105.37, 105.38 and 105.391, the term "public waters" shall include "wetlands" unless the statute expressly states otherwise.

Subd. 15. "Wetlands" includes, and shall be limited to all types 3, 4 and 5 wetlands, as defined in U. S. Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, which are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 16. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level shall be the elevation of the top of the bank of the channel. For reservoirs and flowages the ordinary high water level shall be the operating elevation of the normal summer pool.

History: *1947 c 142 s 1; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 315 s 1-3; 1973 c 344 s 1; 1976 c 83 s 2-6; 1979 c 199 s 1-4*

105.38 DECLARATION OF POLICY.

In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:

(1) Subject to existing rights all public waters and wetlands are subject to the control of the state.

(2) The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state.

(3) The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross-section of public waters or wetlands, including but not limited to the construction, reconstruction, repair, removal, abandonment, the making of any other change, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in any of the public waters or wetlands of the state.

History: *1947 c 142 s 2; 1957 c 502 s 1; 1973 c 315 s 4; 1973 c 344 s 2; 1976 c 83 s 7; 1979 c 199 s 5*

105.39 AUTHORITY AND POWERS OF COMMISSIONER.

Subdivision 1. **Water conservation program.** The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by sections 105.37 to 105.55.

Subd. 2. **Surveys and investigations.** The commissioner is authorized to cause to be made all such surveys, maps, investigations and studies of the water resources and topography of the state as he may deem necessary to provide the information to formulate a program and carry out the provisions of sections 105.37 to 105.55.

Subd. 3. **Allocation and control of wetlands and waters.** The commissioner shall have administration over the use, allocation and control of public waters and wetlands, the establishment, maintenance and control of lake levels and water storage reservoirs, and the determination of the ordinary high water level of any public waters and wetlands.

Subd. 4. **Power to acquire property; eminent domain.** The commissioner shall have the power to acquire title to any private property for any authorized purpose by purchase or by the exercise of the right of eminent domain; and the use of such property in the furtherance of lawful projects under sections 105.37 to 105.55 is hereby declared to be a public purpose. On request by the commissioner, the attorney general shall proceed to acquire the necessary title to private property for such use under the provisions of Minnesota Statutes 1945, Chapter 117.

Subd. 5. **Contracts.** The commissioner is authorized to approve contracts for all works under sections 105.37 to 105.55, to change the plans thereof when necessary, and to supervise, control, and accept the same when complete. He is further authorized to cause the same, together with expenses incurred in connection therewith, to be paid for out of any funds made available to the use of the commissioner.

Subd. 6. **Statewide water information system.** The commissioner in cooperation with other state agencies, including the Minnesota geologic survey, shall establish and maintain a statewide system to gather, process, and disseminate information on the availability, distribution, quality, and use of waters of the state. Each local, regional, and state governmental unit, its officers and employees shall cooperate with the commissioner in accomplishing the purpose of this subdivision.

History: *1947 c 142 s 3; 1973 c 315 s 5; 1979 c 199 s 6*

105.391 WATERS INVENTORY AND CLASSIFICATION.

Subdivision 1. On the basis of all information available to him and the criteria set forth in section 105.37, subdivisions 14 and 15, the commissioner shall inventory the waters of each county and make a preliminary designation as to which constitute public waters and wetlands. The commissioner shall send a list and map of the waters which he has preliminarily designated as public waters and wetlands in each county to the county board of that county for its review and comment. The county board shall conduct at least one public informational meeting within the county regarding the commissioner's preliminary designation. After conducting the meetings and within 90 days after receipt of the list or maps, the county board shall present its recommendation to the commissioner, listing any waters regarding which the board disagrees with the commissioner's preliminary designation and stating with particularity the waters involved and the reasons for disagreement. The commissioner shall review the county board's response and, if he agrees with any of the board's recommendations, he shall revise the list and map to reflect the recommendations. Within 30 days after receiving the county board's recommendations, he shall also notify the county board as to which recommendations he accepts and rejects and the reasons for his decision. After the revision of the map and list, if any, or if no response is received from the county board within the 90 days review period, the commissioner shall file the revised list and map with the recorder of each county and shall cause the list and map to be published in the official newspaper of the county. The published notice shall also state that any person or any county may challenge the designation of specific waters as public waters or wetlands or may request the designation of additional waters as public waters or wetlands, by filing a petition for a hearing with the commissioner within 90 days following the date of publication. The petition shall state with particularity the waters for which the commissioner's designation is disputed and shall set forth the reasons for disputing the designation. If any designations are disputed by petition, the commissioner shall order a public hearing to be held within the county within 60 days following the 90 day period, notice of which shall be published in the state register and the official newspaper of the county. The hearings shall be conducted by a hearings unit composed of one person appointed by the affected county board, one person appointed by the commissioner and one board member of the local soil and water conservation district or districts within the county who shall be selected by the other two members at least 20 days prior to the hearing date. The expenses of and per diem payments to any member of the hearings unit who is not a state employee shall be paid as provided for in section 15.059, subdivision 3, within the limits of funds available from grants to the county pursuant to Laws 1979, Chapter 199, Section 16. In the event there is a watershed district whose boundaries include the waters involved, the district may provide the hearings unit with its recommendations. Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to sections 14.63 to 14.69. The commissioner, the county or any person aggrieved by the decision of the hearings unit may appeal from the hearings unit's order. Upon receipt of the order of the hearings unit and after the appeal period has expired, or upon receipt of the final order of the court in the case of an appeal, the

commissioner shall publish a list of the waters determined to be public waters and wetlands. The commissioner shall complete the public waters and wetlands inventory by December 31, 1982.

Subd. 2. [Repealed, 1979 c 199 s 17]

Subd. 3. Except as provided below, no public waters or wetlands shall be drained, and no permit authorizing drainage of public waters or wetlands shall be issued, unless the public waters or wetlands being drained are replaced by public waters or wetlands which will have equal or greater public value. However, after a state waterbank program has been established, wetlands which are eligible for inclusion in that program may be drained without a permit and without replacement of wetlands of equal or greater public value if the commissioner does not elect, within 60 days of the receipt of an application for a permit to drain the wetlands, to either (1) place the wetlands in the state waterbank program, or (2) acquire it pursuant to section 97.481, or (3) indemnify the landowner through any other appropriate means, including but not limited to conservation restrictions, easements, leases, or any applicable federal program. If the applicant is not offered his choice of the above alternatives, he is entitled to drain the wetlands involved.

In addition, the owner or owners of lands underlying wetlands situated on privately owned lands may apply to the commissioner for a permit to drain the wetlands at any time after the expiration of ten years following the original designation thereof. Upon receipt of an application, the commissioner shall review the current status and conditions of the wetlands. If he finds that the current status or conditions are such that it appears likely that the economic or other benefits to the owner or owners which would result from drainage would exceed the public benefits of maintaining the wetlands, he shall grant the application and issue a drainage permit. If the application is denied, no additional application shall be made until the expiration of an additional ten years.

Subd. 4. [Repealed, 1979 c 199 s 17]

Subd. 5. [Repealed, 1979 c 199 s 17]

Subd. 6. [Repealed, 1979 c 199 s 17]

Subd. 7. [Repealed, 1979 c 199 s 17]

Subd. 8. [Repealed, 1979 c 199 s 17]

Subd. 9. In order to protect the public health or safety, local units of government may establish by ordinance restrictions upon public access to any wetlands from city, county or township roads which abut wetlands.

Subd. 10. Nothing in this chapter shall prevent a landowner from utilizing the bed of wetlands or public waters for pasture or cropland during periods of drought, provided there is no construction of dikes, ditches, tile lines or buildings, and the agricultural use does not result in the drainage of the wetlands or public waters. This chapter shall not prevent a landowner from filling any wetland to accommodate wheeled booms on irrigation devices so long as the fill does not impede normal drainage.

Subd. 11. When the state owns wetlands on or adjacent to existing public drainage systems, the state shall give consideration to the utilization of the wetlands as part of the drainage system. If the wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for any necessary work to allow the proper use and maintenance of the drainage system while still preserving the wetlands.

Subd. 12. The designation of waters as "public waters" or "wetlands" pursuant to this section shall not grant any additional or greater right of access to the public to those waters, nor is the commissioner required to acquire access to those

waters under section 97.48, subdivision 15, nor is any right of ownership or usage of the beds underlying those waters diminished. Notwithstanding the designation of waters or lands as public waters or wetlands, all provisions of Minnesota law forbidding trespass upon private lands shall remain in full force and effect.

History: *1976 c 83 s 8; 1978 c 505 s 1; 1979 c 199 s 7-12; 1979 c 289 s 6; 1982 c 424 s 130*

105.392 WATER BANK PROGRAM.

Subdivision 1. The legislature finds that it is in the public interest to preserve the wetlands of the state and thereby to conserve surface waters, to preserve wildlife habitat, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the commissioner of natural resources is authorized to promulgate rules, which shall include the procedures and payment rates designed to effectuate the terms of this section. This program is intended to supplement and complement the federal water bank program and the payment rates established shall be at least equal to the federal rates existing at the time any agreements are entered into.

Subd. 2. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of ten years, with provision for renewal for additional ten year periods. The commissioner may re-examine the payment rates at the beginning of any ten year renewal period in the light of the then current land and crop values and make needed adjustments in rates for any renewal period.

Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner: (a) types 3, 4, or 5 as defined in U. S. Fish and Wildlife Service Circular No. 39 (1971 edition); (b) its drainage is lawful, feasible, and practical; and (c) its drainage would provide high quality cropland and that is the projected land use. Waters which have the foregoing characteristics but are less than ten acres in size in unincorporated areas or less than 2-1/2 acres in size in incorporated areas shall also be eligible for inclusion in the waterbank program, at the discretion of the commissioner.

Subd. 3. In the agreement between the commissioner and an owner, the owner shall agree:

(1) to place in the program for the period of the agreement eligible wetland areas he designates, which areas may include wetlands covered by a federal or state government easement which permits agricultural use, together with such adjacent areas as determined desirable by the commissioner;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the commissioner;

(3) to effectuate the wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner;

(4) to forfeit all rights to further payments or grants under the agreement and to refund to the state all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may deem appropriate if he determines that the violation by the owner does not warrant termination of the agreement;

105.403 WATER AND RELATED LAND RESOURCES PLANS.

The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval. This plan shall relate each of the programs of the department of natural resources for specific aspects of water management to the others. The statewide plan shall include but not be limited to provisions for the following:

(a) Regulation of improvements and land development by abutting landowners of the beds, banks, and shores of lakes, streams, watercourses, and marshes by permit or otherwise in order to preserve them for beneficial use;

(b) Regulation of construction of improvements on and prevention of encroachments in the flood plains of the rivers, streams, lakes, and marshes of the state;

(c) Reclamation or filling of wet and overflowed lands;

(d) Repair, improvement, relocation, modification or consolidation in whole or in part of previously established public drainage systems within the state;

(e) Preservation of wetland areas;

(f) Management of game and fish resources as related to water resources;

(g) Control of water weeds;

(h) Control or alleviation of damages by flood waters;

(i) Alteration of stream channels for conveyance of surface waters, navigation, and any other public purposes;

(j) Diversion or changing of watercourses in whole or in part;

(k) Regulation of the flow of streams and conservation of the waters thereof;

(l) Regulation of lake water levels;

(m) Maintenance of water supply for municipal, domestic, industrial, recreational, agricultural, aesthetic, wildlife, fishery, or other public use;

(n) Sanitation and public health and regulation of uses of streams, ditches, or watercourses for the purpose of disposing of waste and maintaining water quality;

(o) Preventive or remedial measures to control or alleviate land and soil erosion and siltation of watercourses or bodies of water affected thereby;

(p) Regulation of uses of water surfaces.

History: *1974 c 558 s 1*

105.405 WATER SUPPLY MANAGEMENT.

Subdivision 1. The commissioner shall develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from surface or ground water sources, or from a combination of these.

Subd. 2. No permit authorized by sections 105.37 to 105.55 nor any plan for which the commissioner's approval is required or permitted, involving a diversion of any waters of the state, surface or underground, to a place outside of this state shall be granted or approved until after a determination by the commissioner that the water remaining in this state will be adequate to meet the state's water resources needs during the specified life of the diversion project and after approval by the legislature.

History: *1973 c 412 s 11, 1983 c 301 s 107*

105.41 APPROPRIATION AND USE OF WATERS.

Subdivision 1. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving less than 25 persons. The commissioner shall establish a statewide training program to provide training in the conduct of pumping tests and data acquisition programs.

Subd. 1a. The commissioner shall submit to the legislature by January 1, 1975, for its approval, proposed rules governing the allocation of waters among potential water users. These rules shall be based on the following priorities for appropriation and use of water:

First priority. Domestic water supply, excluding industrial and commercial uses of municipal water supply.

Second priority. Any use of water that involves consumption of less than 10,000 gallons of water per day. For purposes of this section "consumption" shall mean water withdrawn from a supply which is lost for immediate further use in the area.

Third priority. Agricultural irrigation, involving consumption in excess of 10,000 gallons per day, and processing of agricultural products.

Fourth priority. Power production, involving consumption in excess of 10,000 gallons per day.

Fifth priority. Other uses, involving consumption in excess of 10,000 gallons per day.

Appropriation and use of surface water from streams during periods of flood flows and high water levels shall be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

Appropriation and use of surface water from lakes of less than 500 acres in surface area shall be discouraged.

Diversions of water from the state for use in other states or regions of the United States or Canada shall be discouraged, subject to the jurisdiction of the United States government.

No permit shall be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans. The commissioner shall not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued pursuant to section 105.44, subdivision 8, between May 1 and October 1 of any year, unless the commissioner determines the authorized amount of appropriation endangers any domestic water supply.

Subd. 1b. No permit shall be required for the appropriation and use of less than a minimum amount to be established by the commissioner by regulation. Permits for more than the minimum amount but less than an intermediate amount to be specified by the commissioner by regulation shall be processed and approved at the municipal, county, or regional level based on regulations to be established by the commissioner by January 1, 1977. The regulations shall include provisions for reporting to the commissioner the amounts of water appropriated pursuant to local permits.

Subd. 2. It shall be unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major modification in such installation without the written permit of the

commissioner previously obtained upon written application therefor to the commissioner.

The owner or person in charge of every installation for appropriating or using surface or underground water, whether or not under permit, shall file with the commissioner at such time as the commissioner determines necessary to the state wide water information system, a statement of the location thereof, its capacity, the purpose or purposes for which it is used, and such additional information that the commissioner may require, on forms provided by the commissioner.

Subd. 3. The commissioner may examine any installation which appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require.

Subd. 4. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without measuring and keeping a record of the quantity of water used or appropriated as herein provided. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated with reasonable accuracy. The commissioner's determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

Subd. 5. Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before February 15 of the following year upon forms to be supplied by the commissioner.

The records shall be submitted with an annual water appropriation processing fee in the amount established in accordance with the following schedule of fees for each water appropriation permit in force at any time during the year: (a) irrigation permits, $10 for each permitted 40 acres or portion thereof; (b) for nonirrigation permits, $5 for each ten million gallons or portion thereof permitted each year, but not to exceed a total fee of $250 per permit. The fee is payable regardless of the amount of water apppropriated during the year. Failure to pay the fee is sufficient cause for revoking a permit. No fee may be imposed on any state agency, as defined in section 16B.01, or federal governmental agency holding a water appropriation permit.

Subd. 6. Any appropriation or use permit may be transferred if the permittee conveys the real property where the source of water is located to the subsequent owner of the real property. The subsequent owner shall notify the commissioner of natural resources immediately after an appropriation or use permit is transferred pursuant to this section.

History: *1947 c 142 s 5; 1959 c 486 s 1; 1965 c 797 s 1; 1969 c 1129 art 3 s 1; 1973 c 211 s 2, 1973 c 315 s 6; 1974 c 558 s 2,3; 1975 c 105 s 1; 1977 c 446 s 2-4; 1978 c 505 s 2; 1983 c 301 s 108, 1984 c 544 s 89*

105.415 RULES GOVERNING PERMITS.

Notwithstanding the provision in section 105.41, subdivision 1a, stating that the commissioner of natural resources shall submit to the legislature by January 1, 1975, for its approval proposed rules governing the allocation of waters among potential water users, and notwithstanding the provision in section 105.42, subdivision 1a, stating that the commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under the section, the commissioner shall prior to January 30, 1978, adopt rules containing standards and criteria for the issuance and denial of the permits required by sections 105.41 and 105.42.

History: *1976 c 346 s 18, 1977 c 446 s 5*

105.416 IRRIGATION FROM GROUNDWATER.

Subdivision 1. **Permit.** Permit applications required by section 105.41, for appropriation of groundwater for purposes of agricultural irrigation shall be processed as either class A or class B applications. Class A applications are for wells located in areas for which the commissioner of natural resources has adequate groundwater availability data. Class B are those for all other areas. The commissioner shall evaluate available groundwater data, determine its adequacy, and designate areas A and B, statewide. The commissioner shall solicit, receive, and evaluate groundwater data from soil and water conservation districts, and where appropriate revise his area A and B designations. The commissioner of natural resources shall file with the secretary of state a commissioner's order defining these areas by county and township. Additional areas may be added by a subsequent order of the commissioner. Class A and B applications shall be processed in the order received.

Subd. 2. **Class B permits; information requirements.** Class B applications are not complete until the applicant has supplied the following data:

(a) A summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well. For glacial drift aquifers, this data shall include the logs of test holes drilled for the purpose of locating the site of the proposed production well;

(b) The formation and aquifer expected to serve as the groundwater source;

(c) The maximum daily, seasonal and annual pumpage expected;

(d) The anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use;

(e) The results of a pumping test supervised by the commissioner or his designee, conducted at a rate not to exceed the proposed pumping rate for a period not to exceed 72 hours for wells under water table conditions and not to exceed 24 hours for wells under artesian conditions. Before, during and after the pumping test the commissioner shall require monitoring of water levels in one observation well located at such distance from the pumping well which he has reason to believe may be affected by the new appropriation. The permit applicant shall be responsible for all costs of the pumping tests and monitoring in the one observation well. He shall be responsible for the construction of this one observation well if suitable existing wells cannot be located for this purpose. If the commissioner believes that more than one observation well is needed he shall instruct the applicant to install and monitor additional observation wells. The commissioner shall reimburse the applicant for these added costs; and

(f) Upon determination of the area of influence of the proposed well, the location of existing wells within the area of influence which were reported pursuant to section 156A.07, together with readily available facts on depths, geologic formations, pumping and nonpumping water levels and details of well construction as related to the commissioner of health "Water Well Construction Code".

The commissioner may in any specific application waive any of the requirements of clauses (d) to (f) when the necessary data is already available.

Subd. 3. **Issuance of new permits; conditions.** The commissioner shall issue permits for irrigation appropriation from groundwater only where he determines that proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts and that water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code, contained in the rules of the Minnesota state commissioner of health, MHD 217 to 222.

History: *1977 c 305 s 45; 1977 c 446 s 18*

105.417 WATER APPROPRIATIONS FROM SURFACE SOURCES.

Subdivision 1. **Waiver.** The commissioner may waive any limitation or requirement in subdivisions 2 to 5 for just cause.

Subd. 2. **Natural and altered natural watercourses.** Where data are available, permits to appropriate water from natural and altered natural watercourses shall be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows in order to safeguard water availability for instream uses and for downstream higher priority users located in reasonable proximity to the site of appropriation.

Subd. 3. **Waterbasins.** (a) Permits to appropriate water for any purpose from waterbasins shall be limited so that the collective annual withdrawals do not exceed a total volume of water amounting to one half acre-foot per acre of waterbasin based on Minnesota department of conservation bulletin No. 25, "An Inventory of Minnesota Lakes."

(b) As a condition to any surface water appropriation permit, the commissioner of natural resources shall establish an elevation for the subject waterbasin, below which no appropriation shall be allowed. During the determination of the elevation, which for the purposes of this section shall be known as the "protection elevation," the commissioner shall take into account the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat, existing uses of the waterbasin by the public and riparian land owners, the total volume within the waterbasin and the slope of the littoral zone.

(c) As part of any application for appropriation of water for any purpose from a waterbasin of less than 500 acres in surface area, the applicant shall obtain a signed statement from as many landowners with land riparian to the subject waterbasin stating their support to the proposed appropriation as he is able to obtain and it shall indicate the number whose signature he is unable to obtain.

Subd. 4. **Trout streams.** Permits issued after June 3, 1977 to appropriate water for any purpose from streams designated trout streams by the commissioner's orders pursuant to section 101.42, shall be limited to temporary appropriations.

Subd. 5. **Contingency planning.** No application for use of surface waters of the state for any purpose is complete until the applicant submits, as part of the application, a contingency plan which describes the alternatives he will utilize if further appropriation is restricted due to the flow of the stream or the level of a waterbasin. No surface water appropriation for any purpose shall be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of no appropriation.

History: *1977 c 446 s 19*

105.418 CONSERVATION OF PUBLIC WATER SUPPLIES.

During periods of critical water deficiency as determined by the governor and declared by order of the governor, public water supply authorities appropriating water shall adopt and enforce restrictions consistent with rules adopted by the commissioner of natural resources within their areas of jurisdiction to restrict lawn sprinkling, car washing, golf course and park irrigation, and other non-essential uses, together with appropriate penalties for failure to comply with the restrictions. The commissioner may adopt emergency rules pursuant to section 15.0412, subdivision 5 relating to matters covered by this section during the year 1977. Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, shall be adequate grounds for immediate modification of any public water supply authority's appropriator's permit.

History: *1977 c 446 s 20*

105.42 PERMITS; WORK IN PUBLIC WATERS.

Subdivision 1. It shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, by any means, including but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters, without a written permit from the commissioner previously obtained. Application for such permit shall be in writing to the commissioner on forms prescribed by him. No permit shall be required for work in altered natural watercourses which are part of drainage systems established pursuant to chapters 106 and 112 when the work in the waters is undertaken pursuant to those chapters.

This section does not apply to any public drainage system lawfully established under the provisions of chapter 106 which does not substantially affect any public waters.

The commissioner, subject to the approval of the county board, shall have power to grant permits under such terms and conditions as he shall prescribe, to establish, construct, maintain and control wharfs, docks, piers, levees, breakwaters, basins, canals and hangars in or adjacent to public waters of the state except within the corporate limits of cities.

Subd. 1a. The commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under this section. These standards and criteria shall relate to the diversion of water from other uses and changes in the level of public waters to insure that projects will be completed and maintained in a satisfactory manner. The commissioner may by rule identify classes of activities in waterbasins and classes of watercourses on which the commissioner may delegate permit authority to the appropriate county or city under such guidelines as the commissioner may provide based on agreement with the involved county or city and in compliance with the requirements of section 105.45. After November 15, 1975, a permit shall be granted under this section only when the project conforms to state, regional, and local water and related land resources management plans, and only when it will involve a minimum of encroachment, change, or damage to the environment, particularly the ecology of the waterway. In those instances where a major change in the resource is justified, permits shall include provisions to compensate for the detrimental aspects of the change.

In unincorporated areas and, after January 1, 1976, in incorporated areas, permits that will involve excavation in the beds of public waters shall be granted only where the area in which the excavation will take place is covered by a shoreland conservation ordinance approved by the commissioner and only where the work to

be authorized is consistent with the shoreland conservation ordinance. Each permit that will involve excavation in the public waters shall include provisions governing the deposition of spoil materials.

No permit affecting flood waters shall be granted except where the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner and the conduct authorized by the permit is consistent with the flood plain management ordinance, provided that the commissioner has determined that sufficient information is available for the adoption of a flood plain ordinance. No permit involving the control of flood waters by structural means, such as dams, dikes, levees, and channel improvements, shall be granted until after the commissioner has given due consideration to all other flood damage reduction alternatives. In developing his policy with regard to placing emergency levees along the banks of public waters under flood emergency conditions, the commissioner shall consult and cooperate with the office of emergency services.

No permit that will involve a change in the level of public waters shall be granted unless the shoreland adjacent to the waters to be changed is governed by a shoreland conservation ordinance approved by the commissioner and the change in water level is consistent with that shoreland conservation ordinance. Standards and procedures for use in deciding the level of a particular lake must insure that the rights of all persons are protected when lake levels are changed and shall include provisions for providing technical advice to all persons involved, for establishing alternatives to assist local agencies in resolving water level conflicts, and mechanics necessary to provide for local resolution of water problems within the state guidelines.

Subd. 2. Nothing in this section shall prevent the owner of any dam, reservoir, control structure, or waterway obstruction from instituting repairs which are immediately necessary in case of emergency. However, the owner shall notify the commissioner at once of the emergency and of the emergency repairs being instituted and, as soon as practicable, shall apply for a permit for the emergency repairs and any necessary permanent repairs. Nothing in this section shall apply to routine maintenance, not affecting the safety of the structures.

In case of an emergency where the commissioner declares that repairs or remedial action is immediately necessary to safeguard life and property, the repairs, remedial action, or both, shall be started immediately by the owner.

Subd. 3. The owner of any dam, reservoir, control structure, or waterway obstruction constructed before a permit was required by law shall maintain and operate all such dams, reservoirs, control structures, and waterway obstructions in a manner approved by the commissioner and in accordance with any rules and regulations promulgated by the commissioner in the manner prescribed by chapter 14.

History: *1947 c 142 s 6; 1973 c 123 art 5 s 7; 1973 c 315 s 7; 1973 c 344 s 3; 1974 c 428 s 5; 1974 c 558 s 4; 1976 c 83 s 10; 1978 c 779 s 1; 1979 c 199 s 15; 1982 c 424 s 130*

105.43 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.

Application for authority to establish and maintain levels on any public water and applications to establish the natural ordinary high water level of any body of public water may be made to the commissioner by any public body or authority or by a majority of the riparian owners thereon, or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

History: *1947 c 142 s 7; 1973 c 315 s 8*

105.44 PROCEDURE UPON APPLICATION.

Subdivision 1. **Permit.** Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require. This data may include but not be limited to a statement of the effect the actions proposed in the permit application will have on the environment, such as: (a) changes in water and related land resources which are anticipated, (b) unavoidable but anticipated detrimental effects; (c) alternatives to the actions proposed in the permit. If the proposed activity, for which the permit is requested, is within a city, or is within or affects a watershed district or a soil and water conservation district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and the secretary of the board of supervisors of the soil and water conservation district and on the mayor of the city. Proof of such service shall be included with the application and filed with the commissioner.

Subd. 1a. **Excavation charges.** The commissioner shall impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93.

Subd. 2. **Authority.** The commissioner is authorized to receive applications for permits and to grant the same, with or without conditions, or refuse the same as hereinafter set forth. Provided, that if the proposed activity for which the permit is requested is within a city, or is within or affects a watershed district or a soil and water conservation district the commissioner may secure the written recommendation of the managers of said district and the board of supervisors of the soil and water conservation district or the mayor of the city before granting or refusing the permit. The managers or supervisors or mayors shall file their recommendation within 30 days after receipt of a copy of the application for permit.

Subd. 3. **Waiver of hearing.** The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application is granted, with or without conditions, or is refused, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may within 30 days after mailed notice thereof file with the commissioner a demand for hearing on the application together with the bond required by subdivision 6. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. Any hearing pursuant to this section shall be conducted as a contested case in accordance with chapter 14. If the commissioner elects to waive a hearing, and if no demand for hearing be made, or if a hearing is demanded but no bond is filed as required by subdivision 6, the order shall become final at the expiration of 30 days after mailed notice thereof to the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city and no appeal of the order may be taken to the district court.

Subd. 4. **Time.** The commissioner shall act upon all applications, except for appropriations for irrigation, pursuant to subdivision 8, within 30 days after the application and all required data is filed in his office; either waiving hearing and making an order thereon or directing hearing thereon.

Subd. 5. **Notice.** The notice of hearing on any application shall recite the date, place and time fixed by the commissioner for the public hearing thereon and shall show the waters affected, the levels sought to be established or any control structures proposed. The notice shall be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner, once each week for two

successive weeks prior to the day of hearing in a legal newspaper published in the county in which a part or all of the affected waters are located. Notice shall also be mailed by the commissioner to the county auditor and the mayor of any municipality or the watershed district and the soil and water conservation district affected. The commissioner shall also fulfill any notice requirements prescribed by sections 14.57 to 14.59 and rules of the chief administrative law judge.

Subd. 6. **Hearing costs.** Except where a public hearing is demanded by a public authority which is not the applicant, the applicant shall pay the following, if after the hearing the commissioner's action, taken pursuant to subdivision 2, is affirmed without material modification: (1) Costs of the stenographic record and transcript, (2) rental expenses, if any, of the place of hearing, (3) costs of publication of orders made by the commissioner; however, in no event shall the applicant pay more than $750.

Where the public hearing is demanded by a public authority which is not the applicant, the public authority making the demand shall pay the costs and expenses listed above if the commissioner's action is affirmed without material modification. An applicant filing a demand for a public hearing shall execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner, and in an amount and form fixed by the commissioner. The bond or security shall be conditioned for the payment of all costs and expenses of the public hearing if the commissioner's action taken pursuant to subdivision 2 is affirmed without material modification. No bond or security is required of a public authority which demands a public hearing. The commissioner, in his discretion, may waive the requirement for a bond or other security. In all other instances, costs of the hearing shall be borne in the manner prescribed by chapter 14 and the chief administrative law judge.

Subd. 7. **Witnesses; contempt.** The commissioner may subpoena and compel the attendance of witnesses and the production of all books and documents material to the purposes of the hearing. Disobedience of every such subpoena shall be punishable as a contempt in like manner as a contempt of the district court on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred.

Subd. 8. **Permit to irrigate agricultural land.** When an application for permit to irrigate agricultural land from public waters is made, the soil and water conservation district may make recommendations to the commissioner regarding the disposition of the application and its compatibility to a comprehensive soil and water conservation plan approved pursuant to section 40.07, subdivision 9, within 30 days of the receipt of the application. Within 30 days of receipt of the application the commissioner may require additional specific information from the applicant. Upon receipt of all additional specific information required of the applicant, the commissioner shall have an additional 60 days to review that information, consider the soil and water conservation recommendations and decide whether to grant or deny the permit; provided that if the commissioner orders a hearing, then the time within which he must grant or deny the application shall be ten days after receipt of the report of the hearing officer. In the case of an application for permit to irrigate agricultural land, failure of the commissioner to act thereon within the specified time period, shall be deemed an order granting the application. This order shall be deemed granted ten days after the applicant has given written notice to the commissioner stating his intention to proceed with the appropriation.

Subd. 9. **Limitations on permits.** Except as otherwise expressly provided by law, every permit issued by the commissioner of natural resources under the provisions of Minnesota Statutes 1949, Sections 105.37 to 105.55, or any amendment thereof, shall be subject to the following:

(1) Cancellation by the commissioner at any time if deemed necessary by him for any cause for the protection of the public interests;

(2) Such further conditions respecting the term of the permit or the cancellation thereof as the commissioner may prescribe and insert in the permit;

(3) All applicable provisions of law existing at the time of the issuance of the permit or thereafter enacted by the legislature;

(4) Any applications granted under subdivision 8, or deemed granted under the provisions thereof, shall likewise be subject to the foregoing provisions of this subdivision, and shall be subject also to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district wherein the land to be irrigated is located.

Subd. 10. **Permit fees.** Each application for a permit authorized by sections 105.37 to 105.64, shall be accompanied by a permit application fee in the amount of $30 to defray the costs of receiving, recording, and processing the application. The commissioner may charge an additional permit application fee in excess of the fee specified above, in accordance with a schedule of fees adopted by rules promulgated in the manner provided by section 16A.128, which fee schedule shall be based upon the project's costs and the complexity of the permit applied for.

For projects requiring a mandatory environmental assessment pursuant to chapter 116D the commissioner may charge an additional field inspection fee of not less than $25 for each permit applied for under sections 105.37 to 105.64. The commissioner shall establish pursuant to rules adopted in the manner provided by section 16A.128, a schedule for field inspection fees which shall include actual costs related to field inspection such as investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Except as provided below, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by subdivision 4, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit. No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn. No permit application or field inspection fee may be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

History: *1947 c 142 s 8; 1951 c 334 s 1; 1961 c 488 s 1-3; 1969 c 637 s 1; 1969 c 706 s 1-3; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 211 s 3; 1973 c 315 s 9-12; 1974 c 558 s 5; 1977 c 162 s 1-5; 1977 c 446 s 6-13; 1982 c 424 s 130; 1983 c 301 s 109; 1984 c 544 s 89; 1984 c 640 s 32*

105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE.

The commissioner shall make findings of fact upon all issues necessary for determination of the applications considered by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. In all other cases the commissioner shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest. In all permit applications the applicant has the burden of proving

MINNESOTA STATUTES

CHAPTER 110A, RURAL WATER USER DISTRICTS

CHAPTER 110A

RURAL WATER USER DISTRICTS

110A.01 POLICY STATEMENT.

Conservation of the state's water resources is a state function, and the public interest, welfare, convenience, and necessity require the creation of water user districts and the construction of systems of works, in the manner provided, for the conservation, storage, distribution, and use of water. The construction of systems of works by districts, as provided, is hereby declared to be in all respects for the welfare and benefit of the people of Minnesota.

History: *1978 c 744 s 1*

110A.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 110A.01 to 110A.36 the following terms have the definitions given in this section.

Subd. 2. "Water user district" or "district" means a district organized under sections 110A.01 to 110A.36, either as originally organized or as reorganized, altered, or extended.

Subd. 3. "Board" means the board of directors of a district organized under sections 110A.01 to 110A.36.

Subd. 4. "Works" and "system" include all lands, property, rights, rights of way, easements, and related franchises deemed necessary or convenient for their operation, all water rights acquired or exercised by the board in connection with works, all means of conserving, controlling, and distributing water, including, but not limited to outlets, treatment plants, pumps, lift stations, service connections, mains, valves, hydrants, wells, reservoirs, tanks and other appurtenances of public water systems. A work or system may be used for domestic, commercial, industrial and stock watering purposes only and shall not be used for irrigation purposes.

Subd. 5. "Project" means any one of the works defined, or any combination of works which are physically connected or jointly managed and operated as a single unit.

Subd. 6. "City" means any home rule charter, statutory or other city, however organized.

Subd. 7. "Court" means district court in the judicial district where the largest number of petitioners resides.

History: *1978 c 744 s 2*

110A.03 WATER USER DISTRICT; ORGANIZATION.

A water user district may be created and organized as provided in sections 110A.01 to 110A.36, and may sue and be sued in its corporate name. The procedure provided by sections 110A.01 to 110A.36 is alternative to that provided by other law. A district may not be organized in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington counties.

History: *1978 c 744 s 3*

110A.04 PETITION FOR ORGANIZATION.

A water user district may be organized under the provisions of sections 110A.01 to 110A.36 after filing in the court a petition in compliance with the requirements set forth, and the approval of the petition by the court. The petition shall state that it is the intent and purpose of the petitioners to create a district under the provisions of sections 110A.01 to 110A.36, subject to approval by the court. The petition shall contain:

(1) The name of the proposed district;

(2) The object and purpose of the system proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works;

(3) A description of the land constituting the proposed district and its boundaries, and the names of any cities or towns included partly or wholly within the boundaries;

(4) The location of the principal place of business of the proposed district;

(5) A statement that the proposed district shall not have the power to levy taxes or assessments;

(6) The number of members of the board of directors of the proposed district, which shall be not less than five nor more than 13, a statement as to whether the directors shall be elected at large or shall be apportioned to election divisions, the names and addresses of the members who shall serve until their successors are elected and qualified as provided in sections 110A.01 to 110A.36, and if election divisions are provided for, the respective divisions which the directors are to represent. The persons named in the petition as directors shall be owners of land within the district. If election divisions are provided for, they shall be owners of land within the divisions they are to represent.

History: *1978 c 744 s 4*

110A.05 LANDS INCLUDED.

The lands proposed to be included within the district need not consist of contiguous parcels. A district may to the extent authorized by resolution of the governing body of the city consist of land within the limits of a city and may consist of land within the limits of any town or county, located outside the metropolitan area, as defined by section 473.121, subdivision 2.

History: *1978 c 744 s 5*

110A.06 ORGANIZATION OF DISTRICT WITHIN TERRITORIAL BOUNDARIES OF ANOTHER DISTRICT.

A district may to the extent authorized by the existing district be organized within, or partly within, the territorial boundaries of another district organized under this or other law, so long as the works or systems, their operation, the exercise of powers and the assumptions of duties and responsibilities, of one district, do not nullify, conflict with, or materially affect those of another preexisting district. A new district may not be organized within the boundaries of a preexisting district if the preexisting district disapproves within 30 days after mailing of notice pursuant to section 110A.13.

History: *1978 c 744 s 6*

110A.07 DIRECTORS; ELECTION.

Directors may be elected either at large, or from election divisions. If the petition states that the directors shall be elected from election divisions, the petition shall describe the boundaries of the divisions, which may be drawn either with or without regard to the limits of any city or town included within the district boundaries. So far as practicable, each district shall include the same number of parties to contracts with the district for purchase of water.

History: *1978 c 744 s 7*

110A.08 GROUPING OF DIRECTORS ELECTED AT LARGE; TERM OF OFFICE.

Directors shall be elected within 60 days after the petition is approved by the court and filed with the secretary of state. The directors named in the petition shall hold office until the election. So far as possible, an equal number of those elected shall serve one, two and three years.

History: *1978 c 744 s 8*

110A.09 PETITION; SIGNATURES.

The petition must be signed by 50 percent of the landowners, except the holders of easements for electric or telephone transmission and distribution lines, within the area outside the limits of any city constituting the proposed district. If the proposed district includes any area within a city, the petition must be accompanied by a resolution of the governing body of the city requesting a specific area within the city be included within the proposed district. On each petition, set opposite the signature of each petitioner, shall be stated the petitioner's name and post office address and the location of land of which the petitioner is the owner.

History: *1978 c 744 s 9; 1986 c 444*

110A.10 INSTRUMENTS CONSTITUTING PETITION.

The petition may contain any number of separate instruments, and to each sheet for petitioners' signatures shall be attached a full and correct copy of the petition. Every sheet of every petition containing signatures shall have below the signatures an affidavit by the circulator in substantially the following form:

State of Minnesota,

County of .....

....., being first duly sworn, deposes, that the affiant is the circulator of the foregoing petition containing ..... signatures; that each person whose name appears on the petition sheet personally signed the petition in the presence of affiant; that the affiant believes that each signer is an owner of the land described opposite the signer's signature, to be included within the proposed district, residing at the address written opposite the signer's name, and that affiant stated to every petitioner the legal effect and nature of the petition before each signed.

.....
Circulator.

History: *1978 c 744 s 10; 1986 c 444*

110A.11 MAPS, PLANS AND ESTIMATES.

The petition shall be accompanied by the resolutions required by section 110A.05, maps showing the location of land within the proposed district and the proposed system of works, and by other maps, plans, and estimates as necessary to describe fully the proposed system.

History: *1978 c 744 s 11*

110A.12 EXAMINATION OF PETITION.

Upon receipt of the petition, the court shall determine whether it complies with the requirements of sections 110A.01 to 110A.36 and dismiss the petition if the requirements are not complied with. The petitioners may present a new petition covering the same matter, or the same petition with additional signatures if additional signatures are necessary.

History: *1978 c 744 s 12*

110A.13 PUBLICATION OF PETITION.

Subdivision 1. The petition and a map of the proposed district shall be published in each county in which lands within the proposed district lie, in a newspaper of general circulation published in the county, once each week for at least two successive weeks before the time the petition is filed with the court together with a list of names of the petitioners within the county and their addresses.

Subd. 2. Prior to being filed with the court, the petition and a map of the proposed district shall be sent by certified mail to each city with a population of 20,000 or less *if the proposed district comes within one-half mile of the city's boundary*, each city with a population of greater than 20,000 if the proposed district comes within one mile of the city's boundary and to each existing district organized under Laws 1978, chapter 744 or Minnesota Statutes, chapter 116A if the new district boundary comes within one mile of an existing system's boundary.

History: *1978 c 744 s 13*

110A.14 PROTEST AGAINST ORGANIZATION.

Any owner of land within the proposed district may file with the court a protest against the qualifications of any signer of the petition, and the court shall consider and determine the validity of protests.

History: *1978 c 744 s 14*

110A.15 INVESTIGATION OF PROPOSED DISTRICT AND WORKS.

If the court determines that the petitioners have complied with the requirements of sections 110A.01 to 110A.36, it shall make an immediate investigation of the proposed district and of its proposed works, systems, or plans and of the engineering and economic feasibility of the project. The court, in its discretion, may make an estimate of the cost of the investigation and require the petitioners to defray part or all of the estimated cost before proceeding with the investigation.

History: *1978 c 744 s 15*

110A.16 FEASIBILITY; RECORDING; ESTABLISHMENT.

The court, within 90 days from the receipt of the petition, or within 90 days from the time funds are available to defray the cost of the investigation, shall declare that the proposed project is or is not feasible, will conform to public health and conform to public convenience and welfare. If the project is not feasible, the court shall dismiss the petition. If the court deems the project feasible and conforming to public convenience and welfare, it shall immediately execute a certificate setting forth a copy of the petition declaring that the petition is approved, and file it in the office of the secretary of state and a copy of it, certified by the secretary of state, in the office of the county auditor of each county in which any of the lands in the district are located. Thereupon, the district, under its designated name, shall be a body politic and corporate under the provisions of sections 110A.01 to 110A.36 and a public corporation of the state.

History: *1978 c 744 s 16*

copy in the office of each county auditor, the members of the board of directors named in the petition shall immediately qualify and assume the duties of their office. Failure or refusal to qualify within a period of 15 days thereafter shall be deemed to create a vacancy which shall be filled as provided by sections 110A.01 to 110A.36. The first meeting of the board of directors shall be called by the director first named in the petition.

History: *1978 c 744 s 17*

110A.18 ADDITIONAL TERRITORY.

The procedure for extending a water user district by including additional territory shall be as provided by sections 110A.19 to 110A.22.

History: *1978 c 744 s 18*

110A.19 PETITION TO INCLUDE ADDITIONAL TERRITORY.

A water user district may be extended by including additional territory by filing with the court a petition signed by at least 50 percent of the landowners except the holders of easements for electric or telephone transmission and distribution lines, in any area outside the limits of a city to be included, a copy of a resolution of the governing body of a city requesting a specific area within the city be included within the expanded district, and a resolution of the board of directors of the district approving the expansion of the district, upon compliance with the requirements hereinafter set forth. The petition shall contain a description of the lands to be included.

History: *1978 c 744 s 19*

110A.20 MAPS; PLANS; ESTIMATES.

The petition shall be accompanied by maps showing the location of the lands to be included, the proposed system of works and other plans and estimates as necessary to fully describe the project.

History: *1978 c 744 s 20*

110A.21 PUBLICATION; PROTESTS.

Subdivision 1. The petition shall be published in each county in which the lands to be included lie, in a newspaper of general circulation published in the county, once each week for at least two successive weeks before the time the petition is filed with the court together with the list of names of the petitioners and their addresses and land owned. Any owner of land within the area to be included, who did not sign the petition may file a written protest with the court as provided in section 110A.14.

Subd. 2. Prior to being filed with the court, a map of the proposed district shall be sent by certified mail to each city with a population of 20,000 or less if the proposed district comes within one-half mile of the city's boundary, each city with a population greater than 20,000 if the proposed district comes within one mile of the city's boundary and to each existing district organized under Laws 1978, chapter 744 or Minnesota Statutes, chapter 116A if the new proposed district boundary comes within two miles of the existing system's boundary.

History: *1978 c 744 s 21*

110A.22 APPROVAL OF EXTENSION.

Upon receipt of the petition the court shall act upon the petition in the same manner as required upon an original petition to create a district, as set forth in sections 110A.12 to 110A.17.

Upon the approval of the petition and project, and the issuance and filing of the certificate of approval in the office of the secretary of state and filing a copy in the office of the county auditor of each county in which any lands in which the district is located, the included areas shall be part of the district.

History: *1978 c 744 s 22*

110A.23 MEMBERS; ELECTION; TERMS.

After the election of the board of directors members of the board to succeed those elected in the initial election provided for in section 110A.08, respectively, and to fill unexpired terms, shall be nominated and elected and shall take office in the following manner. One year from the date of the initial election an election shall be held to elect directors to succeed those whose terms are about to expire. The term of each director thus elected shall commence two weeks after the director's election and continue for three years and until a successor is elected and qualified. Election of directors shall be conducted as provided by section 110A.24.

History: *1978 c 744 s 23; 1986 c 444*

110A.24 ELECTIONS; PLACE.

Subdivision 1. The board of directors of the district shall fix the hour and place, within the boundaries of the district, of each election and shall preside. If the district is divided into election divisions, the board in its discretion may fix a place of election within each election division, and the directors who represent that division shall preside.

Subd. 2. Every person or corporation which is a party to a contract with the district for the purchase of water to be furnished by the district, may cast one vote at each election for each director to be elected. In case election divisions are provided for, each person or corporation entitled to vote by reason of being a party to a contract shall select the division in which the person or corporation shall vote, which selection shall be made under rules established by the board of directors.

Subd. 3. The board shall at least 20 days prior to the date of election, mail to each person or corporation entitled to vote, at the person's or corporation's last known place of residence or business, a notice stating the time, place, and purpose of the election or, in the alternative, publish in each county in which lands within the district lie, in a newspaper of general circulation in the county, once each week for at least two successive weeks before the time of election, a notice that the election will be held giving the purpose, time and place.

Subd. 4. At the hour and place of the election, the presiding directors shall call the roll of those entitled to vote, and the number of votes to which each is entitled. They shall make a record of the qualified voters present and prescribe the manner of casting ballots and canvassing votes. If election divisions are provided for, but the election is held at one place within the district instead of being held in each division, the board shall call the roll for each division and conduct the election for each division separately. All costs incident to the election of directors shall be paid by the district.

Subd. 5. The candidate for director required to fill an existing vacancy or to succeed an outgoing director who receives the highest number of votes cast shall be declared elected.

History: *1978 c 744 s 24; 1986 c 444*

110A.25 DIRECTORS.

Subdivision 1. No person shall be qualified to hold office as a member of the board of directors of any district unless that person is a party to a contract to purchase water from the district.

Subd. 2. Vacancies on the board by reason of death, disability, failure to hold land in the district, or in the election division if election divisions are provided for, or otherwise shall be filled by the board of directors. The members elected to fill vacancies shall serve until members to fill out the remainder of the terms may be elected at the next succeeding district election.

Subd. 3. Members of the board of directors shall be paid their actual expenses while engaged in performing the duties of their office or otherwise engaged upon the business of the district. In addition they shall receive as compensation for services at rates determined by qualified voters at an annual meeting.

History: *1978 c 744 s 25; 1986 c 444*

110A.26 OFFICERS.

Subdivision 1. The board of directors shall elect the officers of the district who shall be a president, a vice-president, a secretary and a treasurer. The board shall appoint an executive committee and other officers, agents, and employees as necessary to transact the business of the district. The president, vice president and treasurer shall be elected from the membership of the board of directors.

Subd. 2. The treasurer shall furnish and maintain a corporate surety bond in an amount sufficient to cover all moneys coming into the treasurer's possession or control, which shall be satisfactory in form and with sureties approved by the board. The bond, as approved, shall be filed with the secretary of state, and copies filed with the auditors of counties within the district and the premium upon the bond paid by the district.

History: *1978 c 744 s 26, 1986 c 444*

110A.27 BOARD OF DIRECTORS.

Subdivision 1. The corporate powers of the district shall be exercised by the board of directors of the district.

Subd. 2. The board of directors may adopt rules and regulations or bylaws, consistent with sections 110A.01 to 110A.36, for the conduct of the business and affairs of the district. The board of directors shall cause to be kept accurate minutes of their meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management, and business of the district. The books and records shall be kept at the principal place of business of the district and at reasonable business hours always open to public inspection.

History: *1978 c 744 s 27*

110A.28 POWERS.

Subdivision 1. The district shall have all the usual powers of a public corporation, and may acquire by purchase, gift, or other lawful means and hold real or personal property reasonably necessary for the conduct of its business, or lease property for its proper purposes, and sell, lease, or otherwise dispose of property when not needed.

Subd. 2. The district may own, construct, reconstruct, improve, purchase, lease, receive by gift, or otherwise acquire, hold, extend, manage, use, or operate any works, as defined in sections 110A.01 to 110A.36, and any and every kind of property, personal or real, necessary, useful, or incident to their acquisition, extension, management, use, and operation, and may sell, mortgage, alienate, or otherwise dispose of works under the terms and conditions provided in sections 110A.01 to 110A.36.

Subd. 3. A district may enter into any contract, lease, agreement, or arrangement with a state, county, city, town, district, governmental or public corporation or association, or with a person, firm, or corporation, public or private, or with the government of the United States, or with any officer, department, bureau, or agency thereof, or with any corporation organized under federal law to exercise the powers set forth in this section, or for the sale, leasing, or otherwise furnishing or establishing of water rights, water supply, conveyance and distribution of water, water service, or water storage, for domestic, industrial, municipal, or stock watering purposes, or for the financing or payment of the cost and expenses incident to the construction, acquisition, or operation of works, or incident to any obligation or liability entered into or incurred by the district.

Subd. 4. A district may exercise any of the powers enumerated in this section either within or beyond or partly within and partly beyond the boundaries of the district and of the state, unless prohibited by the law of the area or state concerned or of the United States of America.

Subd. 5. A district may appropriate the waters of the state in the same manner as other persons under the laws of this state. A district shall not, in the exercise of the powers conferred by sections 110A.01 to 110A.36, interfere with, injure, or otherwise damage or affect existing water rights, other than through the purchase of the rights or through condemnation proceedings. No district, corporation, association, or individual holding a water right for lands located either within or outside the boundaries of a district shall be in any way affected by the operations of the district other than by reason of a contract voluntarily entered into by the organization or individual with the district, or by reason of the exercise by the district of the power of eminent domain.

Subd. 6. A district may exercise the power of eminent domain pursuant to chapter 117, after declaring by resolution the necessity for and purpose of the taking of property and the extent of the taking.

Subd. 7. The district shall have no power of taxation, or of levying assessments for special benefits. No governmental authority shall have power to levy or collect taxes or assessments for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district or upon which the district may be or become in any manner liable. Nor shall any privately owned property within or outside a district, or the owner thereof, nor any city, town, county, or other political subdivision or public or private corporation or association or its property, be directly or indirectly liable for any district indebtedness or obligation beyond the liability to perform an express contract between the owner or public or private organization and the district.

Subd. 8. No person, city, town, county, or other governmental subdivision, or other public or private corporation or association shall be liable for the payment of any rent or charge for water storage, water supply, or for any of the costs of operation of a district, unless a contract has been entered into between the person or public or private organization and the district furnishing water storage or water supply. All capital and operating expenses shall be borne by the users in proportion to their use of water supplied by the district.

Subd. 9. A district organized under sections 110A.01 to 110A.36 may exercise any power conferred by sections 110A.01 to 110A.36 to obtain grants or loans or both from any federal agency pursuant to acts of congress, and may accept from private owners or other sources, gifts, deeds or instruments of trust or title relating to land, water rights and any other form of property.

Subd. 10. A district may purchase and acquire lands, water rights, rights of way, and real and personal properties of every nature in cooperation with the United States under conditions as may to the board seem advisable, and to convey them under the conditions, terms and restrictions approved by the directors and the federal government or any of its agencies and to pay the purchase price and any and all construction costs or other necessary expenses and costs in connection with any works contemplated by sections 110A.01 to 110A.36 either from its own funds or cooperatively with the federal government.

Subd. 11. A district shall not, in the exercise of the powers conferred by sections 110A.01 to 110A.36, provide service to actual or potential residential, commercial, industrial or publicly-owned land uses within one-half mile of the limits of a city of up to 20,000 persons without approval by the city council. Approval shall not be required prior to serving class 2a lands as defined in section 273.13.

Subd. 12. A district shall not, in the exercise of the powers conferred by sections 110A.01 to 110A.36, provide service to actual or potential residential, commercial, industrial or publicly-owned land uses within one mile of the limits of a city of more than 20,000 persons without approval by the city council. Approval shall not be required prior to serving class 2a lands as defined in section 273.13.

History: *1978 c 744 s 28; 1Sp1985 c 14 art 4 s 11,12*

110A.29 CONTRACTS.

Subdivision 1. Before a district shall enter into a contract for the construction, alteration, extension, or improvement of works, or any part or section thereof, or a building for the use of the district, or for the purchase of materials, machinery, or apparatus, the district shall cause estimates of the cost to be made by a competent

engineer or engineers, and if the estimated cost exceeds $10,000 no contract shall be entered into for a price, cost or consideration exceeding the estimate nor without advertising for sealed bids.

Subd. 2. Prior to advertisement, plans and specifications for the proposed construction work or materials shall be prepared and filed at the principal office or place of business of the district. The advertisement shall designate the nature of construction work proposed to be done or materials proposed to be purchased. The board shall supervise bid lettings by water user districts.

History: *1978 c 744 s 29*

110A.30 DEBT.

The district may borrow money and incur indebtedness by issuing its obligations or entering into contracts for any lawful corporate purpose; provided that all such obligations and contracts, whether express or implied, shall be payable solely:

(1) From revenues, income, receipts and profits derived by the district from its operation and management of systems;

(2) From the proceeds of warrants, notes, revenue bonds, debentures, or other evidences of indebtedness issued and sold by the district which are payable solely from such revenues, income, receipts and profits; or

(3) From federal or state grant gifts or other moneys received by the district which are available therefor.

The district may by resolution pledge any such source to the payment of such obligations and contracts and the interest coming due thereon. Any resolution may specify the particular revenues that are pledged and the terms and conditions to be performed by the district and the rights of the holders of district obligations, and may provide for priorities of liens in any revenues as between the holders of district obligations issued at different times or under different resolutions. The district may provide for the refunding of any district obligation through the issuance of other district obligations, entitled to rights and priorities similar in all respects to those held by the obligations that are refunded. All such obligations and refunding obligations shall be issued in accordance with the provisions of chapter 475, except that such obligations may be sold by negotiation.

History: *1978 c 744 s 30*

110A.31 SERVICE CHARGES.

Subdivision 1. The directors of the district are authorized to agree with the holders of district obligations as to the maximum or minimum amounts which the district shall charge and collect for water sold by the district.

Subd. 2. The directors of the district are authorized to fix and establish the prices, rates and charges at which any and all services, products, resources and facilities made available under the provisions of sections 110A.01 to 110A.36 shall be sold and disposed of; to enter into any and all contracts and agreements, and to do any and all things which in its judgment are necessary, convenient or expedient for the accomplishment of any and all the purposes and objectives of sections 110A.01 to 110A.36, under the general regulations and upon the terms, limitations and conditions it shall prescribe; and the directors shall enter into contracts and fix and establish prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of any and all of the works and systems authorized by sections 110A.01 to 110A.36, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all obligations and other evidences of indebtedness of the district when due. Nothing in sections 110A.01 to 110A.36 shall authorize any change, alteration or revision of rates, prices or charges established by any contract entered into under authority of sections 110A.01 to 110A.36 except as provided by the contract.

Subd. 3. Every contract made by the board for the sale, conveyance and distribution of water, use of water, water storage, or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any money specified in the contract to be paid to the board, the board may, upon notice as shall be prescribed in the contract, terminate the contract and all obligations thereunder. The act of the board in ceasing on a default to furnish or deliver water, use of water, or water storage, under a contract shall not deprive the board of, or limit any remedy provided by the contract or by law for the recovery of money due or which may become due under the contract.

History: *1978 c 744 s 31*

110A.32 DISBURSEMENTS; FISCAL YEAR; AUDITS.

Subdivision 1. Money of the district shall be paid only upon approval of the board of directors and by warrant or other instrument in writing signed by the president and by the treasurer of the district. In case of the death, absence or other disqualification of the president, the vice president shall sign warrants or other instruments.

Subd. 2. The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records and financial affairs of the district to be made by an experienced public accountant, copies of a written report of which audit, certified to by the auditors, shall be placed and kept on file at the principal place of business of the district and shall be filed with the secretary of state.

History: *1978 c 744 s 32*

110A.33 WORKS; OWNERSHIP; SALE.

Subdivision 1. No water supply works, owned by the district shall be sold, alienated, or mortgaged by the district, except under the circumstances described by this section.

Subd. 2. If in the judgment of the board of directors it is for the best interest of the district to sell any portion of the district works not needed for the performance of any outstanding contract, and not mortgaged or pledged as provided for in subdivision 3, the board shall pass a resolution to that effect. The board shall call a special election at which the question of selling the portion of the works shall be submitted to the electors of the district qualified to vote for district directors. The board shall mail to each qualified elector, at the last known place of residence or place of business of the elector, a notice stating the time, place, and purpose of the election, and so far as practicable shall conduct the election in all other respects as provided in section 110A.24. If a majority of all qualified electors of the district vote "yes," the board may sell the portion of the works.

Subd. 3. If, in order to borrow money from the federal government or from any of its agencies, or from the state, it is necessary that the district mortgage or otherwise pledge any or all of its property to secure the payment of loans made to it, the district may mortgage or pledge property and assets for the purpose. Nothing in this section shall prevent the district from assigning, pledging, or otherwise legally committing its revenues, incomes, receipts, or profits to secure the payment of indebtedness to the federal government or any agency thereof, or the state. The state shall never pledge its credit or funds, or any part thereof, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under the provisions of sections 110A.01 to 110A.36. Nothing in sections 110A.01 to 110A.36 authorizes any agency of the state to make loans to a district, unless the agency is otherwise authorized by law.

History: *1978 c 744 s 33; 1986 c 444*

110A.34 FORECLOSURE.

If any district created under sections 110A.01 to 110A.36 shall execute and deliver a mortgage or trust deed to secure the payment of any money borrowed by it for the purposes herein authorized, it may be provided in the mortgage or trust deed that it

may be foreclosed upon default and a receiver may be appointed with the authority provided in the mortgage or trust deed.

History: *1978 c 744 s 34*

110A.35 DISSOLUTION.

Subdivision 1. Any district may be dissolved by authorization of a majority vote of the electors, qualified to vote for district directors, voting thereon at a special election called by the board of directors for that purpose, notice of which shall be mailed to each qualified elector at least 20 days prior to the date of the election and the procedure for which shall conform as nearly as may be to the procedure provided in section 110A.24, for the election of directors. The district shall discharge its obligations before dissolution. The board may liquidate noncash assets prior to dissolution.

Subd. 2. Dissolution shall be completed upon resolution of the board of directors canvassing the vote and declaring that a majority of the qualified electors voting thereon have voted in favor of dissolution. A verified copy of the resolution shall be filed in the office of the secretary of state and with the auditors of counties within the district.

Subd. 3. In case of dissolution all applications for appropriation of water shall be canceled and all rights of the district in applications shall end.

History: *1978 c 744 s 35*

110A.36 APPEALS.

Any party aggrieved by a final order issued pursuant to section 110A.12 which approves or dismisses a petition or which refuses or establishes a project or a district, may appeal as in other civil cases. The appeal shall be made and perfected within 30 days after the filing of the order.

History: *1978 c 744 s 36; 1983 c 247 s 46*

MINNESOTA STATUTES

CHAPTER 112, MINNESOTA WATERSHED ACT

WATERSHEDS

112.01-112.33 [Repealed, 1955 c 799 s 52]

112.34 WATERSHED ACT; DECLARATION OF POLICY, CITATION.

Subdivision 1. In order to carry out conservation of the natural resources of the state through land utilization, flood control and other needs upon sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources, the establishment of a public corporation, as an agency of the state for the aforesaid purposes, is provided in this chapter of Minnesota Statutes. This chapter shall be construed and administered so as to make effective these purposes.

Subd. 2. This chapter shall be known and may be cited as "Minnesota watershed act."

History: *1955 c 799 s 1; 1967 c 634 s 1*

112.35 DEFINITIONS.

Subdivision 1. For the purposes of this chapter the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Person" includes firm, copartnership, association, or corporation but does not include public or political subdivision.

Subd. 3. "Public corporation" means a county, town, school district, or a political division or subdivision of the state. Public corporation, except where the context clearly indicates otherwise, does not mean a watershed district.

Subd. 4. "Board" means the Minnesota water resources board established by section 105.71.

Subd. 5. "Managers" means the board of managers of a watershed district.

Subd. 6. "Publication" means publication once a week for two successive weeks in accordance with section 645.11.

Subd. 7. "Public health" includes any act or thing tending to improve the general sanitary conditions of the district.

Subd. 8. "Public welfare," "general welfare," and "public benefit" include any act or thing tending to improve or benefit or contribute to the safety or well-being of the general public or benefit the inhabitants of the district.

Subd. 9. "County auditor" means the county auditor of any county affected by a watershed district.

Subd. 10. "Court administrator" means the court administrator of the district court of the county in which any judicial proceeding concerning a district is pending.

Subd. 11. "Engineer" means the engineer designated by the managers to act as engineer.

Subd. 12. "Appraisers" means the persons appointed by the managers of the district to ascertain and report benefits and damages arising from proposed work.

Subd. 13. "Director" means the director of the division of waters, soils and minerals.

Subd. 14. "Commissioner" means the commissioner of natural resources.

Subd. 15. "Petition" means an initiating petition for "work", and may consist of one or more petitions therefor.

Subd. 16. "Nominating petition" means an initiating petition for the creation of a watershed district, and may consist of one or more petitions therefor.

Subd. 17. "Hearing" means a hearing conducted by either the managers or the board, which, if conducted by the board pursuant to rules promulgated by it, may be formal, provided, however, that all interested parties shall be given a reasonable opportunity to be heard.

Subd. 18. "Interested party" means any public corporation or any person having an interest in the subject matter pending or involved, and shall include the director or any agency of government.

Subd. 19. "Project" or "projects" means any construction, maintenance, repairs or improvements of a watershed district including planning and development to accomplish any of the purposes for which a district is organized.

Subd. 20. "Notice by mail" or "mailed notice" means a notice mailed and addressed to each person entitled to receive notice if the address be known to the auditor or court administrator, or can be ascertained by inquiry at the office of the county treasurer of the county wherein the affected land or property is located.

Subd. 21. "Resident owner" or "resident freeholder" means the owner of land or the contract purchaser, and who resides in the state.

Subd. 22. "Metropolitan area" has the meaning given in section 473.121, subdivision 2.

History: *1955 c 799 s 2; 1961 c 601 s 1; 1967 c 634 s 2; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 712 s 1; 1982 c 509 s 12; 1982 c 540 s 1; 1Sp1986 c 3 art 1 s 82*

112.36 ESTABLISHMENT OF DISTRICTS.

Subdivision 1. **General power.** The board is hereby vested with jurisdiction, power, and authority, upon filing of a nominating petition, to establish a watershed district and define and fix the boundaries thereof, all areas of which shall be contiguous and which may be entirely within or partly within and partly without any county, and may include the whole or any part of any watershed or watersheds within the discretion of the board and may include the whole or any part of one or more counties, and to appoint the first board of managers thereof, as herein provided.

Subd. 2. **Purposes of district.** A watershed district may be established for any or all of the following conservation purposes:

(1) control or alleviation of damage by flood waters;

(2) improvement of stream channels for drainage, navigation, and any other public purpose;

(3) reclaiming or filling wet and overflowed lands;

(4) providing water supply for irrigation;

(5) regulating the flow of streams and conserving the waters thereof;

(6) diverting or changing watercourses in whole or in part;

(7) providing and conserving water supply for domestic, industrial, recreational, agricultural, or other public use;

(8) providing for sanitation and public health and regulating the use of streams, ditches, or watercourses for the purpose of disposing of waste;

(9) repair, improve, relocate, modify, consolidate, and abandon, in whole or in part, drainage systems within a watershed district;

(10) imposition of preventive or remedial measures for the control or alleviation of land and soil erosion and siltation of watercourses or bodies of water affected thereby;

(11) regulating improvements by riparian landowners of the beds, banks, and shores of lakes, streams, and marshes by permit or otherwise in order to preserve the same for beneficial use;

(12) providing for the generation of hydroelectric power;

(13) protecting or enhancing the quality of water in watercourses or bodies of water; and

(14) providing for the protection of groundwater and regulating groundwater use to preserve groundwater for beneficial use.

History: *1955 c 799 s 3; 1957 c 279 s 1; 1959 c 239 s 1; 1961 c 601 s 2, 1969 c 971 s 1; 1981 c 256 s 2; 1985 c 236 s 1*

112.37 PROCEDURE FOR ESTABLISHMENT.

Subdivision 1. Proceedings for the establishment of a watershed district shall be initiated by the filing of a nominating petition with the secretary of the board. The nominating petition shall be signed by any one of the following groups:

(1) at least one-half of the counties within the proposed district; or

(2) by a county or counties having at least 50 percent of the area within the proposed district; or

(3) by a majority of the cities within the proposed district; or

(4) by at least 50 resident freeholders of the proposed district, exclusive of the resident freeholders within the corporate limits of any city on whose behalf the authorized official has signed the petition.

Subd. 1a. The nominating petition shall set forth the following:

(1) the name of the proposed district and a statement in general terms setting forth the territory to be included in the district;

(2) the necessity for the district, the contemplated improvements within the district, and the reasons why the district and the contemplated improvements would be conducive to public health and public welfare, or accomplish any of the purposes of this chapter;

(3) the number of managers proposed for the district shall be not less than three nor more than nine, and shall be selected from a list of nominees containing at least twice the number of managers to be selected. No manager shall be a public officer of the county, state, or federal government, provided that a soil and water conservation supervisor may be a manager;

(4) a map of the proposed district; and,

(5) a request for the establishment of the district as proposed.

Subd. 1b. The petitioners shall cause to be served upon the county auditor or auditors of the counties affected by the proposed district, the commissioner, and the director, a copy of the nominating petition, and proof of service shall be attached to the original petition, to be filed with the secretary of the board.

Subd. 2. Upon receipt of a copy of such nominating petition the county auditor or auditors, as the case may be, shall determine whether or not the petitioners are freeholders, which determination shall be made upon the tax records, which shall be prima facie evidence of ownership, and from which the auditor shall certify a determination to the board.

Subd. 3. Upon receipt of a copy of the nominating petition , the director shall

(1) Acknowledge receipt thereof to the board;

(2) Prepare a preliminary watershed map of the proposed district showing the natural boundaries and subdivisions thereof;

(3) Prepare a preliminary report based upon the nominating petition and other available data, stating an opinion as to the desirability of organizing the district, and submit the report to the board with such recommendation as the director may deem proper, which report shall be submitted to the board within 30 days from the date of the service of the petition upon the director, unless such time is extended by the board.

Subd. 4. [Repealed, 1967 c 634 s 17]

Subd. 5. No petition containing the requisite number of signatures or petitioners or signed by the requisite number of counties or cities shall be void or dismissed on account of any defects therein, but the board shall, at any time prior to the close of hearing, permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any other defects therein. Several similar petitions, or duplicate copies of the same petition, for the establishment of the same district may be filed and altogether be regarded as one petition. All petitions filed prior to the hearing hereinafter provided shall be considered by the board as part of the original petition.

After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the water resources board.

Subd. 6. [Repealed, 1985 c 236 s 7]

Subd. 7. The managers of a district wholly within the metropolitan area shall number not less than five nor more than nine. The managers shall be selected to fairly represent by residence the various hydrologic areas within the district. They shall be selected from a list of persons nominated jointly or severally by statutory and home rule charter cities and towns having territory within the district. The list shall contain at least three nominees for each position to be filled. If the cities and towns fail to nominate in accordance with this subdivision, the managers shall be selected as provided in subdivision 1a.

History: *1955 c 799 s 4; 1959 c 248 s 1-3; 1961 c 601 s 3,4; 1967 c 634 s 3,4; 1969 c 1072 s 1; 1973 c 123 art 5 s 7; 1982 c 509 s 13,14; 1982 c 540 s 2; 1984 c 411 s 1; 1985 c 236 s 2; 1986 c 444*

112.38 HEARING, NOTICE.

When it has been made to appear to the board that a sufficient nominating petition has been filed, the board shall, within 35 days thereafter, by its order, fix a time and place, within the limits of the proposed district, for a hearing thereon; provided that if there is not a suitable place within the proposed district, the board may select a place within the limits of the county or counties in which publication of the notice of the hearing is required. Notice of such hearing shall be given by the board by publication published once each week for two successive weeks prior to the date of hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located, the last publication shall occur at least ten days before the hearing. Notice shall also be mailed by the board to the county auditor and to the chief executive official of any municipality affected, which notice shall contain the following:

(1) That a nominating petition has been filed with the board, and a copy thereof with the county auditor of the county or counties affected;

(2) A general description of the purpose of the contemplated improvement, and the territory to be included in the proposed district;

(3) The date, time, and place of hearing, and

(4) That all persons affected thereby or interested therein may appear and be heard.

History: *1955 c 799 s 5; 1957 c 279 s 2; 1959 c 245 s 1; 1973 c 712 s 2*

112.39 ACTION OF BOARD UPON PETITION.

Subdivision 1. At the time and place fixed for the hearing on the nominating petition, all persons interested in or affected by the proposed watershed district shall be given an opportunity to be heard. The board may continue the hearing from time to time as it may deem necessary.

Subd. 2. For the purpose of carrying out the provisions of this chapter and to hold hearings, the chair of the board, or any member thereof, shall have the power to subpoena witnesses, to administer oaths, and to compel the production of books, records, and other evidence. Witnesses shall receive the same fees and mileage as in civil actions. All persons shall be sworn before testifying, and the right to examine and cross-examine witnesses shall be the same as in civil actions. The board shall cause a record of all proceedings before it to be made and filed with the secretary of the board. Copies thereof may be obtained upon such terms and conditions as the board shall prescribe.

Subd. 3. Upon the hearing if it appears to the board that the establishment of a district as prayed for in the nominating petition would be for the public welfare and public interest, and that the purpose of this chapter would be subserved by the establishment of a watershed district, the board shall, by its findings and order, establish a watershed district and give it a corporate name by which, in all proceedings, it shall thereafter be known, and upon filing a certified copy of said findings and order with the secretary of state such watershed district shall become a political subdivision of the state and a public corporation, with the authority, power, and duties as prescribed in this chapter.

Subd. 4. The findings and order of the board shall name the first board of managers of the district whose term of office shall be for one year, and until their successors are appointed and qualified, and shall designate the place within the district where the principal place of business of the district shall be located, and define the boundaries of the district, which may be changed upon a petition therefor, signed and provided in section 112.37, subdivision 1 or signed by the board of managers of a watershed district upon resolution duly passed authorizing the same, and a notice and hearing thereon, in the same manner as in the original proceeding. Whenever a petition for a boundary change involves a common boundary of two or more watershed districts the board may determine in which district the hearing shall be held. The principal place of business may be changed within the district by the managers upon resolution duly passed authorizing the same, with a notice and a hearing to be conducted by the managers. Notice of such hearing shall be given by the managers of publication published once each week for two successive weeks prior to the date of hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located, the last publication shall occur at least ten days before the hearing. Notice of hearing shall be mailed to the county auditor of each county affected ten days before the hearing. After the hearing the managers may order the change in place of business which shall be effective upon the filing of a certified copy thereof with the secretary of state and the secretary of the board.

Subd. 5. A copy of the findings and order shall, at the time of filing a certified copy thereof with the secretary of state, be mailed to the county auditor of each county affected, the commissioner, and director.

Subd. 6. If the board should determine that the establishment of a district as prayed for in the nominating petition would not be for the public welfare and public interest, and would not serve the purpose of this chapter, the board shall, by its decision, dismiss the proceedings. A copy of such order shall be forthwith mailed to the county auditor of each county affected, and to the commissioner, and director.

Subd. 7. [Repealed, 1959 c 270 s 2]

Subd. 8. [Repealed, 1959 c 270 s 2]

History: *1955 c 799 s 6; 1959 c 270 s 1; 1965 c 651 s 1; 1967 c 634 s 5,6; 1969 c 1072 s 2; 1982 c 540 s 3; 1986 c 444*

112.40 RULES OF PRACTICE.

The board shall adopt rules of practice for its proceedings and hearings, not inconsistent with the provisions of this chapter and other provisions of law, as it deems necessary and expedient.

History: *1955 c 799 s 7*

112.401 BOARD HEARINGS.

Subdivision 1. **Procedure.** (a) A rulemaking hearing shall be conducted under chapter 14.

(b) A hearing must be conducted as a contested case under the provisions of chapter 14 if the hearing is:

(1) in a proceeding to establish or terminate a watershed district; or

(2) of an appeal under section 112.801.

(c) Notwithstanding chapter 14, other hearings under this chapter, except hearings under paragraphs (a) and (b), shall be conducted by the board under this section. The board may refer the hearing to one or more members of the board, or an administrative law judge to hear evidence and make findings of fact and report them to the board.

Subd. 2. **Procedure for noncontroversial plans or petitions.** (a) If the board finds that a watershed plan or petition that would be given a hearing under subdivision 1, paragraph (c), is noncontroversial, the board may proceed under this subdivision.

(b) The board must give notice that the plan or petition has been filed. The notice must be made:

(1) by publication once each week for two successive weeks in a legal newspaper in each county affected;

(2) by mail to the county auditor of each county affected; and

(3) by mail to the chief official of each home rule charter and statutory city affected.

(c) The notice:

(1) must describe the actions proposed by the plan or petition;

(2) invite written comments on the plan or petition for consideration by the board;

(3) state that a person who objects to the actions proposed in the plan or petition may submit a written request for hearing to the board within 30 days of the last publication of the notice of filing of the plan or petition; and

(4) state that if a timely request for hearing is not received, the board may make a decision on the plan or petition at a future meeting of the board.

(d) If one or more timely requests for hearing are received, the board must hold a hearing on the plan or petition.

Subd. 3. **Appeal.** A party that is aggrieved by the decision made by the order of the board may appeal the order to the district court.

History: *1961 c 601 s 24; 1985 c 236 s 3*

112.41 PERPETUAL EXISTENCE.

A district created under the provisions of this chapter shall have perpetual existence with power, but only to the extent necessary for lawful conservation purposes, to sue and be sued, to incur debts, liabilities and obligations, to exercise the power of eminent domain, to provide for assessments, and to issue certificates, warrants, and bonds and do and perform all acts herein expressly authorized, and all other acts necessary and proper for carrying out and exercising the powers expressly vested in it.

History: *1955 c 799 s 8*

112.411 PROCEDURE FOR TERMINATION.

Subdivision 1. Proceedings for the termination of a watershed district shall be initiated only by the filing of a petition with the secretary of the board, which petition shall be signed by not less than 25 percent of the resident freeholders of the district. Such petition shall state that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purposes of the Minnesota watershed act.

The petitioners shall cause to be served upon the county auditor or auditors of the counties affected a copy of said petition and proof of service thereof shall be attached to the original petition, to be filed with the secretary of the board.

Subd 2. Upon receipt of a copy of such petition the county auditor or auditors shall determine whether or not the petitioners are resident freeholders within the district, which determination shall be made, upon the tax records, which shall be prima facie evidence of ownership, and from which the auditor shall certify the determination to the board.

Subd. 3. At the time of filing the petition or before notice of a hearing thereon is given, a bond shall be filed by the petitioners with the board to be approved by it and in such sum as the board may determine, conditioned that the petitioners, in case the petition is dismissed or denied, will pay all costs and expenses therefrom.

Subd. 4. When it appears to the board that a sufficient petition has been filed, the board shall within 35 days thereafter, by its order fix a time and place, within the district, for a hearing thereon. The provisions of this section relating to notice and conduct of a hearing upon a nominating petition shall govern.

If the board should determine that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purpose of the Minnesota watershed act the board shall by its findings and order terminate the district. Upon filing a certified copy of said findings and order with the secretary of state such district shall cease to be a political subdivision of the state.

Subd. 5. The board shall not entertain a petition for termination of a district within five years from the date of its formation nor shall it make determinations pursuant to petitions in accordance with provisions of this section, more often than once in five years.

History: *1959 c 244 s 1; 1961 c 563 s 1,2; 1986 c 444*

112.42 MANAGERS; ORGANIZATION, APPOINTMENT OF SUCCESSORS.

Subdivision 1. At the time of filing a certified copy of the findings and order with the secretary of state, the board shall cause personal service of a copy thereof to be made upon the managers named therein. Within ten days after such personal service has been made the managers shall meet at the designated principal place of business of the district and shall take and subscribe the oath defined in Minnesota Constitution, article V, section 6, which oath as subscribed shall be forthwith filed with the secretary of the board. Each manager shall thereupon file with the board a bond in the sum of $1,000, the premium to be paid by the district for the faithful performance of the manager's duties. The amount of such bond may be increased by the board if in the judgment of the board it becomes necessary. The managers shall thereupon organize by electing one of their number as president, another as secretary, and another as treasurer, and

provide the necessary books, records, furniture, and equipment for the conduct and the transaction of their official duties.

In lieu of the individual bonds required to be furnished by managers in a watershed district, a schedule or position bond or undertaking may be given by the managers of the watershed district or a single corporate surety fidelity, schedule or position bond or undertaking covering all managers and employees of the watershed district, including officers and employees required by law to furnish an individual bond or undertaking, may be furnished in the respective amounts fixed by law or by the person or board authorized to fix the amounts, conditioned substantially as provided in section 574.13.

Subd. 2. The board of managers shall adopt a seal and shall efficiently keep a record of all proceedings, minutes, certificates, contracts, bonds of its employees, and all other business transacted or action taken by the board, which record shall be, at all reasonable times, open to inspection by the property owners within the district, and all other interested parties.

Subd. 3. At least 30 days prior to the expiration of the term of office of the first managers named by the board, the county commissioners of each county affected shall meet and proceed to appoint successors to the first managers. If the nominating petition that initiated the district originated from a majority of the cities within the district or if the district is wholly within the metropolitan area, the county commissioners shall appoint the managers from a list of persons nominated jointly or severally by the townships and municipalities within the district. The list shall contain at least three nominees for each position to be filled. Managers for a district wholly within the metropolitan area shall be appointed to fairly represent by residence the various hydrologic areas within the district. It shall be submitted to the affected county board at least 60 days prior to the expiration of the term of office. If the list is not submitted within 60 days prior to the expiration of the term of office the county commissioners shall select the managers from eligible individuals within the district. The county commissioners shall at least 30 days before the expiration of the term of office of any managers meet and appoint the successors. If the district affects more than one county, distribution of the managers among the counties affected shall be as directed by the board. Ten years after the order of establishment, upon petition of the county board of commissioners of any county affected by the district, the board after public hearing thereon, may redistribute the managers among the counties if redistribution is in accordance with the policy and purposes of this chapter. No petition for the redistribution of managers shall be filed with the board more often than once in ten years. The term of office of each manager, if the number does not exceed three, shall be one for a term of one year, one for a term of two years, and one for a term of three years. If the managers consist of five members, one shall be for a term of one year, two for a term of two years, and two for a term of three years. If the board of managers consists of more than five members, the managers shall be appointed so that as nearly as possible one-third serve terms of one year, one-third serve terms of two years, and one-third serve terms of three years. If the district affects more than one county, the board shall direct the distribution of the one, two and three year terms among the affected counties. Thereafter, the term of office for each manager shall be for a term of three years, and until a successor is appointed and qualified. If the district affects more than five counties, in order to provide for the orderly distribution of the managers, the board may determine and identify the manager areas within the territory of the district and select the appointing county board of commissioners for each manager's area. Any vacancy occurring in an office of a manager shall be filled by the appointing county board of commissioners. A record of all appointments made under this subdivision shall be filed with the county auditor of each county affected, with the secretary of the board of managers, and with the secretary of the water resources board. No person shall be appointed as a manager who is not a voting resident of the district and none shall be a public officer of the county, state, or federal government, provided that a soil and water conservation supervisor may be a manager.

Subd. 3a. The board shall restructure the boards of managers of districts estab-

lished before the effective date of Laws 1982, chapter 509 and located wholly within the metropolitan area to ensure compliance with the requirements of sections 112.37, subdivision 7 and 112.42, subdivision 3. The board shall request recommendations from the district and the affected local government units. Additional managers, if any, shall be appointed by the county designated by the board, to terms designated by the board, at the time of and in the manner provided for the next regular appointment of successors to managers of the district.

Subd. 4. The provisions of section 351.02, shall apply to members of the board of managers.

Subd. 5. The compensation of managers for meetings and for performance of other necessary duties shall not exceed $50 per day. Managers shall be entitled to reimbursement for all traveling and other expenses necessarily incurred in the performance of official duties.

Subd. 6. The managers shall adopt bylaws and rules not inconsistent with this chapter for the administration of the business and affairs of the district. Rules adopted under this subdivision are not subject to the provisions of section 112.43, subdivision 1c.

Subd. 7. The managers shall meet annually and at such other times as may be necessary for the transaction of the business of the district. If public facilities are not available for a district's principal place of business within the district, the board shall determine and designate the nearest suitable public facility as the district's principal place of business. A meeting may be called at any time upon the request of any manager, and when so requested the secretary of the district shall mail a notice of such meeting to each member at least eight days prior thereto.

History: *1955 c 799 s 9; 1959 c 340 s 1; 1961 c 601 s 5,6; 1967 c 259 s 1; 1967 c 634 s 7; 1969 c 1072 s 3; 1973 c 123 art 5 s 7; 1973 c 712 s 3; 1976 c 2 s 172; 1978 c 513 s 1; 1982 c 509 s 15,16; 1982 c 540 s 4-6; 1984 c 411 s 2; 1986 c 444*

112.421 PROCEDURE FOR INCREASING NUMBER OF MANAGERS.

Subdivision 1. **Petition and notice.** A petition must be filed with the secretary of the board to initiate proceedings to increase the number of managers of a watershed district. The petition must be signed as provided in section 112.37, subdivision 1, or signed by the board of managers of the watershed district. When the petition is file the board shall order a hearing to be held on the petition. Notice of hearing must given in the same manner as a nominating petition.

Subd. 2. **Hearing.** If the board determines at the hearing that an increase in the number of managers would serve the public welfare, public interest, and the purpose of this chapter, the board shall increase the number of managers. If the district affects more than one county, the board, by order, shall direct the distribution of the managers among the affected counties.

History: *1985 c 236 s 4*

112.43 MANAGERS; POWERS, DUTIES.

Subdivision 1. The managers, in order to give effect to the purposes of this chapter may:

(1) Make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which the district is organized and may initiate, undertake, and construct projects not required to be instituted by a petition under section 112.47.

(2) Cooperate or contract with any state or subdivision thereof or federal agency or private or public corporation or cooperative association.

(3) Construct, clean, repair, alter, abandon, consolidate, reclaim or change the course or terminus of any public ditch, drain, sewer, river, watercourse, natural or artificial, within the district.

(4) Acquire, operate, construct, and maintain dams, dikes, reservoirs, water supply systems, and appurtenant works.

(5) Regulate, conserve, and control the use of water within the district.

(6) Acquire by gift, purchase, or the right of eminent domain necessary real and personal property. The district may acquire such property without the district where necessary for a water supply system.

(7) Contract for or purchase such insurance as the managers deem necessary for the protection of the district.

(8) Establish and maintain devices for acquiring and recording hydrological data.

(9) Enter into all contracts of construction authorized by this chapter.

(10) Enter upon lands within or without the district to make surveys and investigations to accomplish the purposes of the district. The district shall be liable for actual damages resulting therefrom.

(11) To take over when directed by the district court or county board all judicial and county drainage systems within the district, together with the right to repair, maintain, and improve the same. Whenever such judicial or county drainage system is taken over in whole or in part, the same, to the extent so taken over, shall become a part of the works of the district.

(12) Provide for sanitation and public health and regulate the use of streams, ditches, or watercourses for the purpose of disposing of waste and preventing pollution.

(13) Borrow funds from the following: (a) any agency of the federal government; (b) any state agency; (c) any county in which the district is located in whole or in part; (d) a financial institution authorized under chapter 47 to do business in this state. A county board may lend the amount requested by a district. No district may have more than a total of $50,000 in loans from counties and financial institutions under this clause outstanding at any time.

(14) Prepare a flood plain map of the lands of the district which are in the flood plain of lakes and watercourses, which map shall be made available to the counties and local municipalities for inclusion in flood plain ordinances and shall be in conformity with state rules setting standards and criteria for designation of flood plain areas.

(15) Prepare an open space and greenbelt map of the lands of the district which should be preserved and included in the open space and greenbelt land areas of the district, which map shall be made available to the counties and local municipalities for inclusion in flood plain and shoreland ordinances.

(16) Appropriate necessary funds to provide for membership in a state association of watershed districts which has as its purpose the betterment and improvement of watershed governmental operations.

(17) To control the use and development of land in the flood plain and the greenbelt and open space areas of the district, the managers may adopt, amend or repeal rules to control encroachments, the changing of land contours, the placement of fill and structures, the placement of encumbrances or obstructions and to require the landowner to remove fill, structures, encumbrances, or other obstructions and to restore the previously existing land contours and vegetation. The managers may by rule provide a procedure whereby the district can do the work required and assess the cost thereof against the affected property as a special assessment. The rules shall be applicable only in the absence of county or municipal ordinances for the regulation of those items set forth in this clause. The rules shall be adopted in accordance with subdivision 1c.

Subd. 1a. No resolution or rule approved by the managers after August 1, 1978, which affects land or water within the boundaries of a home rule charter or statutory city shall be effective within the city's boundaries prior to notifying the governing body of the city.

Subd. 1b. A watershed district located wholly within the metropolitan area shall have the duties and authorities provided in sections 473.875 to 473.883. Notwithstanding any contrary provision of subdivision 1, a watershed district located wholly

within the metropolitan area shall have authority to regulate the use and development of land only under the conditions specified in section 473.877, clause (c).

Subd. 1c. Each district shall adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers. Rules of the district shall be adopted or amended by a majority vote of the board of managers, after public notice and hearing. They shall be signed by the secretary of the board of managers and shall be recorded in the board's official minute book. For each county of the district the board shall publish a notice of any hearing or adopted rules in one or more legal newspapers published in the county and generally circulated in the district, and shall file any adopted rules with the county recorder of each county affected. A copy of the rules shall be mailed by the board to the governing body of each municipality affected.

Any ordinance of a district in effect on March 23, 1982 shall remain in full force and effect until the district adopts rules pursuant to this subdivision.

Subd. 2. The district court may enforce by injunction or other appropriate order the provisions of sections 112.37 to 112.801 and any rule or regulation adopted or order issued by the managers thereunder.

Subd. 3. The managers shall annually make and file a report of the financial conditions of the district, the status of all projects therein, the business transacted by the district, other matters affecting the interests of the district, and a discussion of the managers' intentions for the succeeding year. Copies of the report shall be transmitted to the secretary of state water resources board, the commissioner, and the director within a reasonable time.

Subd. 4. The exercise of said powers by the managers shall at all times be subject to review by the board as herein provided.

History: *1955 c 799 s 10,12 subd 3; 1961 c 601 s 7; 1963 c 834 s 1-4; 1965 c 51 s 17; 1969 c 971 s 2; 1969 c 1072 s 4; 1971 c 662 s 1; 1978 c 513 s 2; 1Sp1981 c 4 art 1 s 71; 1982 c 509 s 17; 1982 c 540 s 7-9; 1985 c 248 s 70*

112.431 DRAINAGE IMPROVEMENTS.

Subdivision 1. **Findings.** The legislature finds that because of urban growth and development in the metropolitan area problems arise for the improvement and repair of drainage systems which were originally established for the benefit of land used for agricultural purposes and that the procedure for the improvement and repair of drainage systems now in the metropolitan area should be simplified to more adequately and economically improve and repair drainage systems.

Subd. 2. **Definitions.** (a) For the purpose of this section the terms defined in this subdivision have the meanings ascribed to them.

(b) "Drainage system" means a ditch as defined by section 106A.005, subdivision 11.

(c) "Watershed district" means any watershed district established pursuant to the provisions of this chapter, wholly or partially in a metropolitan county.

(d) "Metropolitan county" means any one of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington.

(e) "Metropolitan area" means the combined area of the metropolitan counties.

Subd. 3. **Drainage improvements.** With the concurrence of the governing bodies of the home rule charter or statutory cities and the town board of the towns where the drainage system is located, the board of managers of a watershed district in which there exists a drainage system shall have the power to improve and repair any drainage system transferred to the watershed district pursuant to section 112.65, by conforming to sections 429.031, 429.041, subdivisions 1 and 2; 429.051; 429.061 and 429.071.

Subd. 4. **Alternative power.** With the concurrence of the governing bodies of the home rule charter or statutory cities and the town boards of the towns where the drainage system is located, the managers in their discretion may improve and repair a drainage system under the power granted to them elsewhere in this chapter.

Subd. 5. **Appeal.** Any person aggrieved by an order for improvement or repair by the managers or by an assessment may appeal as provided in sections 112.801 and 112.82.

History: *1980 c 614 s 85; 1985 c 172 s 113*

112.44 ADVISORY COMMITTEE.

The managers, upon qualifying, shall appoint an advisory committee consisting of at least five members, who shall be selected if practicable as follows: one shall be a supervisor of a soil and water conservation district; one shall be a member of a county board; one shall be a member of a sporting organization, and one shall be a member of a farm organization and others may be appointed at the discretion of the managers, which appointees shall be residents of the district, and shall serve during the pleasure of the managers. The committee shall advise and assist the managers upon all matters affecting the interests of the district, and shall make recommendations to the managers upon all contemplated projects and works of improvement within the district. In addition the managers may appoint other interested and technical persons who may or may not reside within the district who shall serve during the pleasure of the managers. Each member of the advisory committee, in the discretion of the managers, shall be entitled to reimbursement for actual traveling and other expenses necessarily incurred in the performance of duties as provided for state employees.

History: *1955 c 799 s 11; 1959 c 247 s 1; 1969 c 637 s 1; 1969 c 1072 s 5; 1973 c 712 s 4; 1986 c 444*

112.45 EMPLOYEES, DUTIES.

The managers may employ a chief engineer, professional assistants, and such other employees as may be necessary, and provide for their qualifications, duties and compensation. The chief engineer shall be superintendent of all the works and improvements; the chief engineer shall make a full report to the managers each year, or more often if necessary. A copy of such report and all recommendations by the chief engineer shall be transmitted to the managers and the director. The managers may require any officer or employee of the district to give a bond for the faithful performance of duties, in an amount prescribed by them, the cost thereof to be paid from the funds of the district.

History: *1955 c 799 s 12; 1961 c 601 s 8; 1986 c 444*

112.46 OVERALL PLAN.

Subdivision 1. **Plan contents.** The managers shall, within a reasonable time after qualifying, adopt an overall plan for any or all of the purposes for which a district may be established. The overall plan shall be composed of narrative statements of existing water and water related problems within the district, possible solutions thereto and the general objectives of the district. The overall plan may also include as a separate section any proposed projects. The separate statement of proposed projects or petitions for projects to be undertaken pursuant to the overall plan shall be considered as a comprehensive plan of the district for all purposes of review by the metropolitan council under section 473.165, if the district is within the metropolitan area.

Subd. 2. **Adoption procedures.** A copy of the plan shall forthwith be transmitted to the county auditor of each county affected, the secretary of the board, the commissioner, the director, the governing bodies of all municipalities, any soil and water conservation district having territory within the district and the metropolitan council if the district is within the metropolitan area. Upon receipt of the copy the director and the council shall examine it and within 60 days thereafter, unless the time is extended by the board, the director and the council shall transmit to the board recommendations in connection therewith, a copy of which shall be transmitted to the managers, the county auditor of each county affected, the governing bodies of all affected municipalities and any affected soil and water conservation districts. Within

45 days from receipt of the director's and the council's recommendations the board shall have a public hearing on the proposed overall plan. The provisions of this chapter relating to notice, time, and place of hearing upon a nominating petition shall govern the hearing. After the public hearing the board shall, by its order, prescribe an overall plan for the district. A copy of the order shall be transmitted to the managers, the county board of each county affected, the commissioner, the director, the governing bodies of all municipalities affected, any affected soil and water conservation districts and the council. Upon transmittal the plan shall become the overall plan for the district. The plan may be amended upon a petition submitted by the managers, and the board shall have a hearing on the amendment in the same manner as in the original overall plan proceeding.

Subd. 3. **Plan revision.** The managers and the board shall revise the overall plan for the district at least once every ten years after the board originally prescribes the overall plan and shall make amendments as it deems advisable. The managers shall consider including the following items in the revised overall plan, and any other information deemed appropriate:

(1) Updates and supplements of the existing hydrological and other statistical data of the district;

(2) Specific projects completed;

(3) A statement setting forth the extent to which the purposes for which the district had been established have been accomplished;

(4) A description of problems requiring future action by the district;

(5) A summary of completed studies on active or planned projects, including financial data;

(6) An analysis of the effectiveness of the district's rules and permits in achieving its water management objectives in the district.

Subd. 4. **Board review of revised outline.** After ten years and six months have elapsed from the date that the board prescribed an overall plan or the last revised plan, the managers shall adopt a revised overall plan outline and shall transmit a copy of the outline to the board. Upon receipt of a copy the board shall examine it and within 60 days thereafter adopt recommendations regarding the outline and report them to the managers.

Subd. 5. **Further review.** Within 120 days after receiving the board's recommendations regarding the revised overall plan outline, the managers shall complete the revised overall plan. A copy of the plan shall be transmitted to the board, the county board and county auditor of each county affected, the director, the governing bodies of all municipalities affected, any soil and water conservation district having territory within the district, and the metropolitan council if the district is within the metropolitan area. Upon receipt of the copy, the director and the council shall examine it and within 60 days thereafter, unless the time is extended by the board, the director and the council shall transmit recommendations on the revised plan to the board, a copy of which shall be transmitted to the managers, the county auditor of each county affected, the governing bodies of all affected municipalities, and any affected soil and water conservation districts.

Within 45 days from transmittal of the revised overall plan to the board, the board shall have a public hearing on the proposed revised overall plan. The provisions of this chapter relating to notice, time, and place of hearing upon a nominating petition shall govern this proceeding. After public hearing the board shall, by its order, prescribe a revised plan for the district. A copy of the revised plan shall be transmitted to the managers, the county board of each county affected, the commissioner, the director, the governing bodies of all municipalities affected, any affected soil and water conservation districts and the council. Upon transmittal the plan shall become the overall plan for the district.

History: *1955 c 799 s 13; 1959 c 246 s 1; 1963 c 834 s 5; 1965 c 652 s 1; 1967 c 634 s 8; 1969 c 637 s 1; 1971 c 662 s 2; 1980 c 509 s 25; 1982 c 540 s 10*

112.47 PROJECTS INSTITUTED.

All projects of the district which are to be paid by assessment upon the benefited properties, shall be instituted: (1) by a petition filed with the managers; (2) by unanimous resolution of the managers; or (3) as otherwise prescribed by this chapter.

History: *1955 c 799 s 14; 1965 c 652 s 2, 1973 c 712 s 5; 1982 c 540 s 11*

112.48 APPROVAL OF PROJECT; FILING OF PETITION; CONTENTS; HEARING; BONDS.

Subdivision 1. After the overall plan of the district has been prescribed by the board, as provided in section 112.46, a petition may be filed with the managers for any project within the district conforming in general with the plan. The petition must be signed:

(1) by not less than 25 percent of the resident freeholders, or by the owners of more than 25 percent of the land within the limits of the area proposed to be improved unless the project consists of the establishment of a drainage system as defined in sections 106A.005 to 106A.811 or the improvement of an existing drainage system;

(2) by a majority of the resident owners of the land over which the proposed project passes or is located, or by the owners of at least 60 percent of the area of the land, if the project consists of the establishment of a drainage system as defined in sections 106A.005 to 106A.811;

(3) by not less than 26 percent of the resident owners of the property affected by the proposed project or over which the proposed project passes or by the owners of not less than 26 percent of the area affected or over which the proposed project passes if the project consists of the improvement of an existing drainage system as defined in sections 106A.005 to 106A.811;

(4) by a county board of any county affected; or

(5) by the governing body of any city lying wholly or partly within the area proposed to be improved; provided that if the proposed project affects lands exclusively within a city, the petition shall originate from the governing body of the city.

For the purpose of this subdivision, holders of easements for electric or telephone transmission or distribution lines are not considered freeholders or owners.

The petition shall contain the following:

(a) a description of the proposed project, and the purpose to be accomplished;

(b) a description of the lands over which the proposed project passes or is located;

(c) a general description of the part of the district which will be affected, if less than the entire district;

(d) the need and necessity for the proposed improvement;

(e) that the proposed project will be conducive to public health, convenience, and welfare;

(f) a statement that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no construction contract is let for the project.

Subd. 2. Upon the filing of a petition and before any action is taken on it, one or more of the petitioners shall deposit not less than $2,000 with the board of managers, conditioned to pay all costs and expenses incurred if the project petitioned for is not constructed. Alternatively, with the approval of the board of managers, one or more of the petitioners may make and file a bond payable to the watershed district named in the petition in the sum of not less than $2,000 with good and sufficient sureties, to be approved by the board of managers of the district with which the bond is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the project petitioned for.

If it appears at any time prior to the making of the order establishing a project that the deposit or bond of petitioners is insufficient in amount to protect the watershed

district from loss on account of any costs or expenses incurred or to be incurred, the watershed district shall require an additional deposit or bond. In that event all further proceedings shall be stayed until the deposit or bond is furnished and if the additional deposit or bond is not furnished within the time the watershed district fixes, the proceedings may be dismissed.

In all project proceedings, the expenses incurred prior to establishment shall not exceed the required deposit or the penalty named in the bond or bonds given by the parties. No claim in excess of the amount of the deposit or bond or bonds shall be audited or paid by direction of the watershed district unless one or more parties in the proceeding, within the time the watershed district directs, files an additional deposit or bond in an amount as directed by the watershed district.

If the petition is signed by the proper officials of a county or city, no bond shall be required.

Subd. 3. Where an improvement is to be constructed within the district under an agreement between the managers and the state of Minnesota, or any department or agency thereof, or the United States of America, or any department or agency thereof, wherein the cost of the improvement is to be paid for in whole or in part by the governmental agency but the rights of way, and the expenses of the improvement are assumed by the district or where the managers are undertaking all or a portion of the basic water management project as identified in the overall plan, the following procedure shall be followed. A copy of the project plan shall be forwarded to the board and director for their reports after which the managers shall hold a public hearing on the proposed improvement following publication once each week for two successive weeks prior to the date of the hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located. The last publication shall occur not more than 30 days and at least ten days before the hearing. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the method by which the cost of the improvement is to be paid, including the cost to be allocated to each affected municipal corporation or the state of Minnesota or any department thereof. Not less than ten days before the hearing, notice by mail shall be given to the director and to the municipal corporations wholly or partly within the improvement project area, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested in the proposed project or improvement. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the overall plan and the provisions of this chapter, they shall make findings accordingly and authorize the project.

Subd. 4. The board of managers may institute projects upon a resolution of not less than a majority of the board if:

(a) Each project is financed by one or more grants totaling at least 50 percent of the estimated cost; and

(b) The engineer's estimate of local costs to the district, including any assessments against benefited properties but excluding any state, federal or other grant, is not over $750,000 for any single project. No resolution under this subdivision shall be used for the establishment of a project, the essential nature and purpose of which is for drainage.

The managers shall hold a public hearing on the proposed resolution for the project following publication published once each week for two successive weeks. The publication shall be in a legal newspaper published in the county or counties in which the watershed district is situated. The last publication shall occur at least ten days before the meeting at which the resolution will be heard. The notice shall contain the date, time and place of hearing, the substance of the proposed resolution, the means of financing the project, and a statement that all persons who might be affected by the project or who may be interested in it may appear and be heard. Defects in the notice shall not invalidate the proceedings.

The managers shall secure from the district engineer or other competent person of

their selection a report advising them in a preliminary way whether the proposed project is feasible and estimating the cost of the project. No error or omission in the report shall invalidate the proceeding. The managers may also take other steps prior to the hearing which will in their judgment provide helpful information in determining the desirability and feasibility of the improvement. If after the hearing it appears to the managers that the proposed project promotes the public interest and welfare, and is practicable and in conformity with the overall plan of the district, they shall adopt a final resolution for the project, and properly identify the proceeding by name and number. If the report of the engineer is unfavorable the managers shall fix a time and place for a hearing in the manner provided for the hearing on the resolution. Thereafter the matter may be referred back to the engineer for further study and report or the managers may dismiss the proceeding.

When a final resolution is adopted, the matter shall proceed as in the case of a project instituted by petition as is prescribed by this chapter. Upon the filing by the managers with the auditor of a county of a statement listing the property and corporations benefited or damaged or otherwise affected by any project under this subdivision as found by the appraisers and approved by the managers, proceedings shall be commenced pursuant to section 112.60.

History: *1955 c 799 s 15; 1959 c 243 s 1; 1961 c 601 s 9,10; 1965 c 647 s 1; 1969 c 1072 s 6,7; 1973 c 123 art 5 s 7; 1973 c 712 s 6-8; 1978 c 513 s 3; 1982 c 540 s 12-14; 1985 c 172 s 114*

112.49 SURVEYS, PLANS.

Subdivision 1. If it appears to the managers that the petition is sufficient, that the proposed project promotes the public interest and welfare and is practicable and in conformity with the overall plan of the district, they shall properly identify the proceeding by name and number and shall cause to be made, at the earliest time possible, all necessary surveys and maps for the proposed project as provided in this subdivision. The engineer designated by the managers shall make a report to the managers of findings and recommendations relative to the proposed project. If the engineer finds the improvement feasible the engineer shall include in the report a plan of the proposed project including:

(1) A map of the area to be improved, drawn to scale, showing the location of the proposed improvements; the location and adequacy of the outlet; the watershed of the project area; the location of existing highways, bridges and culverts; all lands, highways and utilities affected, together with the names of the owners, so far as known; the outlines of any public lands and public bodies of water affected; and any other physical characteristics of the watershed necessary for the understanding of the area;

(2) The estimated total cost of the completion of the project including costs of construction and all supervision and administrative costs of the project;

(3) The acreage which will be required and taken as right-of-way listed by each lot and 40 acre tract, or fraction thereof, under separate ownership; and

(4) Other details and information to inform the managers of the practicability and necessity of the proposed project together with the engineer's recommendations on these matters.

Subd. 2. The engineer may adopt and approve and include as a part of the report, any project of the state of Minnesota or the United States which is pertinent to the project and may accept any data, plats, plans, details, or information pertaining to such state or federal project furnished to the engineer by the state or federal agency and the engineer shall omit from the report those items called for in subdivision 1 if the data furnished by the state or federal agency is sufficient to meet the requirements of subdivision 1.

Subd. 3. If the engineer's report is unfavorable the managers shall within 35 days thereafter by order fix a time and place within the district for a hearing at which the petitioners shall show cause why the managers shall not refer the petition back to the

petitioners for such further proceedings thereon as the managers may determine or dismiss the petition. The notice shall state that the engineer's report is unfavorable, that it is on file with the managers and is subject to inspection, and the time and place for hearing thereon. The managers shall mail a copy of the notice to each of the petitioners at least 14 days before the hearing.

Subd. 4. The petitioners may dismiss the petition, upon payment of costs and expenses.

Subd. 5. [Repealed, 1963 c 834 s 26]

Subd. 6. Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the director and to the board by the managers.

The director and the board shall examine the same and within 30 days make their reports thereon to the managers. If they find the report incomplete and not in accordance with the provisions of this chapter, they shall so report. If they approve the same as being a practical plan they shall so state. If they do not approve the plan they shall file their recommendations for changes as they deem advisable, or if in their opinion the proposed project or improvement is not practical they shall so report. If a soil survey appears advisable they shall so advise and in such event the engineer shall make the soil survey and report thereon before the final hearing. Their reports shall be directed to and filed with the managers. Such reports shall be deemed advisory only.

No notice shall issue for the hearing until the board's and the director's reports are filed or the time for filing thereof has expired.

Subd. 7. The findings, recommendations and content of engineering reports for projects under this chapter shall conform as nearly as practicable to the requirements of this section and a copy of each report shall be transmitted to the board by the managers.

History: *1955 c 799 s 16; 1959 c 242 s 1-3; 1961 c 601 s 11; 1963 c 834 s 6,7; 1967 c 634 s 9; 1969 c 1072 s 8; 1978 c 513 s 4; 1982 c 540 s 15,16; 1986 c 444*

112.50 APPRAISALS.

Subdivision 1. Upon the filing of the engineer's report the managers shall, with the least possible delay, appoint three disinterested resident freeholders of the state to act as appraisers. These appraisers shall subscribe an oath to faithfully and impartially perform their duties, and with or without the engineer, shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state of Minnesota or any department thereof, highways, and other property likely to be affected by the proposed improvement or that may be used or taken for the construction or maintenance thereof. Benefits and damages to lands owned by the state of Minnesota or any department thereof held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1, shall be determined subject to the provisions thereof, so far as applicable. Each appraiser may be paid on a per diem basis for every day necessarily engaged in the performance of duties and for actual and necessary expenses. The compensation shall be fixed by the managers, to be paid by the district and included in the cost of improvement. The managers of the watershed districts may in their discretion use the following procedure for the purpose of determining benefits and damages. Upon the filing of the engineer's report the managers with the assistance of the engineer shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state of Minnesota or any department thereof, highways, and other property likely to be affected by the proposed improvement or that may be used or taken from the construction or maintenance thereof. Benefits and damages to lands owned by the state of Minnesota or any department thereof held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1 shall be determined subject to the provisions thereof, so far as applicable. The managers shall also determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of the improvement projects.

Subd. 2. [Repealed, 1959 c 313 s 2]

Subd. 3. [Repealed, 1959 c 313 s 2]

History: *1955 c 799 s 17; 1959 c 313 s 1, 1961 c 601 s 12; 1963 c 834 s 8, 1971 c 662 s 3; 1978 c 513 s 5; 1985 c 172 s 115, 1986 c 444*

112.501 BENEFITED PROPERTY, DETERMINATION.

Subdivision 1. Where the proposed improvement, includes or prays for the construction or improvement of any ditch, stream, river, or watercourse, or any structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by sections 106A.311 to 106A.321.

Subd. 2. In all proceedings under this act assessments for benefits against lands shall be made upon benefits to such lands by reason of the project or improvement affecting the same. Benefited properties shall include:

(1) All lands, including lands owned by the state of Minnesota or any subdivision thereof receiving direct benefits. Direct benefits include, but are not limited to assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels;

(2) All lands that are contributing water or are furnished an improved drainage outlet and all lands that contribute waters that are stored, handled or controlled by the proposed improvement;

(3) All lands that are not receiving but need drainage and that are furnishing waters that are handled or controlled by the proposed improvement.

(4) Benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection and preservation of fish and other forms of wildlife, which benefits shall be assessable against the state of Minnesota to the extent and in the manner provided for assessments against the state in section 84A.55, subdivision 9, and within the available appropriation.

(5) Benefits to municipal corporations which occur to the lands in the municipality generally and which may be in addition to special benefits to specific lands within the municipality.

(6) Benefits that will result to all lands used for railway or other utility purposes.

History: *1959 c 272 s 1; 1961 c 563 s 3; 1963 c 834 s 9,10; 1965 c 774 s 1,2; 1969 c 1072 s 9; 1985 c 172 s 116*

112.51 APPRAISERS' REPORT, EXAMINATION.

Upon filing of the appraisers' report the managers shall examine it to determine if it was made in conformity with the requirements of this chapter, and if the total benefits thus found are greater than the total estimated costs and damages. If the appraisers' report is lacking in any particulars the managers may recommit it to the appraisers for further study and report.

History: *1955 c 799 s 18*

112.52 HEARING UPON PETITION AND REPORTS.

Upon the filing of the report of the engineer and the appraisers appointed herein by the managers, they shall, within 35 days thereafter, by order, fix a time and place within the district for a hearing upon the petition or resolution and reports. Due notice thereof shall be given by the managers as herein provided.

History: *1955 c 799 s 19; 1959 c 220 s 1; 1963 c 834 s 11; 1973 c 712 s 9*

112.53 NOTICE OF HEARING, CONTENTS.

Subdivision 1. The managers shall by publication give notice of the pendency of the petition or resolution; the time and place for hearing thereon; and that the engi-

neer's and appraisers' reports, including the plans, have been filed with the managers and are subject to inspection. The notice shall contain a brief description of the proposed project, together with a description of the properties benefited or damaged, the names of the owners of the properties, the public and other corporations affected by the project as shown by the engineer's and appraisers' reports. A map of the affected area may be included in the notice in lieu of the names of the owners or of the descriptions of the properties affected by the project or both. The notice shall require all parties interested in the proposed project to appear before the managers at the time and place designated in the notice to present any objections they may have, and to show cause why an order should not be made by the managers granting the petition, confirming the reports of the engineer and appraisers, and ordering the establishment and construction of the project.

Subd. 2. **Mailing.** The managers shall give notice by mail, within one week after the beginning of publication, to the director and to each person, corporation, and public body that owns property benefited or damaged by the proposed improvement as shown by the engineers and appraisers report. The notice shall contain a brief description of the proposed improvement and state: that the engineer's and appraisers' report are on file with the managers and available for public inspection, the time and place of hearing; and that the addressee's name appears as an affected party.

Subd. 3. When it is required that the managers acquire land in fee simple estate, they shall, prior to the filing of the appraiser's report, record in the office of county recorder of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands, which notice shall state the purpose for which the lands are to be taken. At least 20 days before the hearing, notice of the hearing in addition to that required in subdivisions 1 and 2 hereof shall be served upon owners of the property, in the same manner as the summons in a civil action, which notice shall describe the land, state by whom and for what purpose it is to be taken and give the names of all persons appearing of record or known to the managers to be the owners. The notice shall also state that benefits and damages have been determined, and that a hearing will be held by the managers at the time and place specified in the notice.

Subd. 4. Where the improvement affects the lands and properties in more than one county, separate notices shall be prepared and published in each county affected showing only the general description of the proposed improvement and the names and descriptions of the properties affected in the county or, in lieu of the names or descriptions or both, a map of the area affected in the county. Notice by mail as provided in subdivision 2 shall be given.

History: *1955 c 799 s 20; 1961 c 601 s 13,14; 1963 c 834 s 12-15; 1973 c 712 s 10; 1976 c 181 s 2, 1981 c 256 s 3-5; 1982 c 540 s 17*

112.54 HEARING BEFORE MANAGERS.

At the time and place specified in the notice, the managers shall hear all parties interested for and against the establishment of the proposed improvement and confirming the reports. All questions relative to the proposed improvement including jurisdiction, sufficiency of the petition or resolution, practicability and necessity shall be determined upon evidence presented at the hearing. Any findings made by the managers prior to the hearing shall not be conclusive but shall be subject to further investigation, consideration, and determination at the hearing. They may order and direct the modification of the engineer's report within the scope of the overall improvement plan for the district, and the assessment of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof. If the amended reports include property not included in the original reports, the managers shall adjourn and cause to be published and mailed, as in the original notice, the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the provisions and

purposes of this chapter, and that the benefits resulting therefrom will be greater than the cost of the construction and damages, they shall make findings accordingly and order and direct the construction of the improvement and confirm the report of the engineer and the findings and report of the appraisers and may by this order authorize the construction of the proposed improvement as a whole or for different parts thereof separately. The managers shall order the engineer to proceed with making the necessary surveys and preparing such plans and specifications as are needed to construct the proposed improvements and report the same to the managers with reasonable dispatch. The hearing then shall be recessed to await the engineer's report and receipt of bids, when it may again be recessed to allow compliance with section 112.541 if said section 112.541 becomes applicable.

History: *1955 c 799 s 21; 1959 c 241 s 1; 1963 c 834 s 16; 1973 c 712 s 11*

112.541 PROCEDURE WHEN CONTRACT IS NOT LET.

If after the receipt of the bids, no bids are received except for a price more than 30 percent in excess of the engineers estimate as contained in the engineer's report, or for a price in excess of the benefits, less damages and other costs, the managers shall follow the procedure described in section 106A.511.

History: *1963 c 834 s 18; 1985 c 172 s 117; 1986 c 444*

112.55 ORDER OF MANAGERS ESTABLISHING IMPROVEMENT, FILING.

Any order of the managers establishing the improvement and authorizing the construction thereof shall forthwith be filed with the secretary of the district, and a certified copy thereof shall be filed with the auditor of each county affected, the board, the commissioner, the director, the Minnesota pollution control agency and the state department of health.

History: *1955 c 799 s 22; 1973 c 712 s 12; 1978 c 513 s 6*

112.56 [Repealed, 1963 c 834 s 26]

112.57 BIDS.

After an order has been made by the managers directing the establishment of each improvement, the managers shall call for bids for the construction of the work and give notice thereof by publication specifying therein the time and place when the bids will be opened for the letting of a contract for the construction of the work. The contract may be let in sections or as a whole, as the managers may direct. Notice thereof shall be published in at least one of the newspapers in the state where such notices are usually published. At a time and place specified in the notice, the managers may accept or reject any or all bids and may let the contract to the lowest responsible bidder, who shall give a bond, with ample security, conditions for the carrying out of the contract. Bids shall not be entertained which in the aggregate exceed by more than 30 percent the total estimated cost of construction. Such contract shall be in writing and shall be accompanied by or shall refer to the plans and specifications for the work to be done, and prepared by the engineer for the district. The plans and specifications shall become a part of the contract. The contract shall be approved by the managers, signed by the president and secretary thereof, and by the contractor.

History: *1955 c 799 s 24; 1963 c 834 s 17*

112.58 EMERGENCY PROCEDURES.

If the managers find that conditions exist which present a clear and imminent danger to the health or welfare of the people of the district, and that to delay action would prejudice the interests of the people of the district or would be likely to cause irreparable harm, the managers may declare the existence of an emergency and designate the location, nature and extent of the emergency. When an emergency has been declared, and to the extent necessary to protect the interests of the district, the

managers may order that work be done under the direction of the managers and the engineer, without a contract. The cost of work undertaken without a contract may be assessed against benefited properties or, if the cost is not more than 25 percent of the latest administrative ad valorem levy of the district and the work is found to be of common benefit to the district, may be raised by an ad valorem tax levy upon all taxable property within the district, or both.

History: *1955 c 799 s 25; 1982 c 540 s 18*

112.59 CONTROL OF CONTRACTS.

In all cases where contracts are let by the managers, they shall have full control of all matters pertaining thereto. If a contractor fails to complete the improvement within the time or in the manner specified in the contract, the managers may extend the time for completion or may refuse an extension of time or may cancel the contract and readvertise and relet the contract. They may require the surety for the contractor to complete the improvement or proceed to have the contract otherwise completed at the expense of the contractor and the surety. They may take such other action with reference thereto that the occasion may require in the interest of the district. The provisions of sections 106A.005 to 106A.811, so far as pertinent, apply to and govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment. The managers shall keep an accurate account of all expenses incurred, which shall include the compensation of the engineer and the assistants, the compensation and expenses of the appraisers as provided in section 112.50, the compensation of petitioners' attorney, the cost of petitioners' bond, the fees of all county officials necessitated by the improvement which shall be in addition to all fees otherwise allowed by law, and the time and expenses of all employees of the district, including the expenses of the managers while engaged in any improvement. The fees and expenses provided for herein shall be audited, allowed and paid upon the order of the managers and shall be charged to and be treated as a part of the cost of the improvement.

History: *1955 c 799 s 26; 1961 c 601 s 15; 1985 c 172 s 118; 1986 c 444*

112.60 ASSESSMENTS, LEVIES.

Subdivision 1. Upon the filing by the managers with the auditor of any county of a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, the auditor shall assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the pertinent provisions of sections 106A.005 to 106A.811.

Subd. 2. Upon filing of the statement as provided in subdivision 1 the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvements, as shown by the report and order of the managers of the district, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided by section 106A.635. In the event an improvement is to be constructed under the provisions of section 112.69, the provisions of section 106A.635 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

Subd. 3. The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in sections 106A.601 to 106A.631. All money received by the treasurer of any county from the sale of bonds, assessments, or otherwise, for the benefit of the district shall be accounted for by the auditor and paid over to the treasurer of the district.

Subd. 4. No assessment shall be levied against any property or corporations benefited under the provisions of this chapter in excess of the amount of benefits received as fixed by the order of the managers authorizing the construction of the improvement or subsequently determined on appeal.

History: *1955 c 799 s 27; 1963 c 41 s 1; 1985 c 172 s 119-121; 1986 c 444*

112.61 FUNDS OF DISTRICT.

Subdivision 1. The money of any district organized under the provisions of this chapter consist of:

Subd. 2. An organizational expense fund, which consists of an ad valorem tax levy, not to exceed two-thirds of one mill on each dollar of assessed valuation of all taxable property within the district or $60,000 whichever is the lesser. Such funds shall be used for organizational expenses, and preparation of an overall plan for projects and improvements. The managers of the district shall be authorized to borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected are hereby authorized to make such advancements. The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the assessed valuation of the area of the counties within the district bears to the assessed valuation of the entire district. In the event an established district is enlarged, an organizational expense fund may be levied against the area added to the district in the same manner as above provided. Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes authorized therein;

Subd. 3. An administrative fund, which consists of an ad valorem tax levy not to exceed one mill on each dollar of assessed valuation of all taxable property within the district, or $125,000, whichever is the lesser. Such funds shall be used for general administrative expenses and for the construction and maintenance of projects of common benefit to the district. The managers may make an annual levy for this fund as provided in section 112.611. In addition to the annual administrative levy, the managers may annually levy a tax of not to exceed one-third of one mill for a period of not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the district.

Subd. 4. A bond fund, which consists of the proceeds of bonds issued by such district, as herein provided secured upon the property of the district which is producing or is likely to produce a regular income and is to be used for the payment of the purchase price of the property or the value thereof as fixed by the court in proper proceedings, and for the improvement and development of such property;

Subd. 5. A construction fund, which is to be supplied by: the sale of county bonds; construction loans from any agency of the federal government; and by special assessments to be levied as herein provided to supply funds for the construction of the improvements of the district, including reservoirs, ditches, dikes, canals, channels, and other works, together with the expenses incident thereto and connected therewith. Construction loans from any agency of the federal government may be repaid from moneys collected by special assessments upon properties benefited by the improvement as herein provided;

Subd. 6. A preliminary fund, which consists of funds provided as herein specified, and is to be used for preliminary work on proposed works of the district.

Subd. 7. Repair and maintenance funds to be established pursuant to the provisions of section 112.64 as amended or hereafter amended.

Subd. 8. A survey and data acquisition fund which shall be established or used only when no other funds are available to the district to pay for making necessary surveys and acquiring data. The fund consists of an ad valorem levy, which can be levied not more than once every five years, not to exceed one mill on each dollar of assessed valuation of all taxable property within the district. At no time shall the balance of the survey and data acquisition fund exceed $50,000. In a subsequent proceeding for a work where a survey has been made, the attributable cost of the survey as determined by the managers shall be included as a part of the cost of the work and that sum shall be repaid to the survey and data acquisition fund.

History: *1955 c 799 s 28; 1959 c 271 s 1; Ex1959 c 67 s 1; 1961 c 601 s 16; 1963 c 834 s 19; 1965 c 648 s 1,2; 1967 c 634 s 10-12; 1969 c 1072 s 10; 1971 c 662 s 4; 1973 c 773 s 1; 1978 c 513 s 7; 1982 c 540 s 19*

112.611 BUDGET; TAX LEVY.

Subdivision 1. On or before October 1 of each year the managers shall adopt a budget for the ensuing year and shall decide upon the total amount necessary to be raised from ad valorem tax levies to meet its budget. Before adopting a budget the managers shall hold a public hearing on the proposed budget. The managers shall publish a notice of the hearing together with a summary of the proposed budget in one or more newspapers of general circulation in each county into which the watershed district extends. The notice and summary shall be published once each week for two successive weeks before the hearing. The last publication shall be at least two days before the hearing.

After adoption of the budget and no later than October 1, the secretary of the district shall certify to the auditor of each county within the district the county's share of such tax, which shall be an amount bearing the same proportion to the total levy as the assessed valuation of the area of the county within the watershed bears to the assessed valuation of the entire watershed district. The maximum amount of any levy shall not exceed that provided for in Minnesota Statutes 1961, Section 112.61 and acts amendatory thereof.

Subd. 2. The auditor of each county in the district shall add the amount of any levy made by the managers to the other tax levies on the property of the county within the district for collection by the county treasurer with other taxes. When collected, the county treasurer shall make settlement of such taxes with the treasurer of the district in the same manner as other taxes are distributed to the other political subdivisions. The levy authorized by this section shall be in addition to any other county taxes authorized by law.

History: *1959 c 256 s 1; 1963 c 834 s 20; 1981 c 88 s 1*

112.62 DISTRICT COURT TO CREATE PRELIMINARY FUND.

Subdivision 1. When a proper petition has been filed with the managers for the construction of a project within the district, the managers may file a petition with the district court in the county where the district has its principal place of business asking that a preliminary expense fund be created for the district, and may subsequently amend or supplement the petition if necessary. At least ten days' notice of a petition or amended or supplementary petition shall be given to the auditor of each county affected by the proposed project. The fund applied for shall be of a size proportionate to meet the needs of the district for preliminary work on the proposed project.

Subd. 2. The district court upon hearing may designate the amount of the fund and fix the proportionate amount that each county affected by the improvement shall pay, in proportion to the area in the county affected by the proposed improvement. The court shall order the auditor of each county to draw a warrant upon the treasurer of the county for the payment of the amount specified in the order, payable to the treasurer of the district. The sum so advanced by the county shall be charged to the district, and shall be repaid with interest as soon as the district has funds for that purpose. The funds so provided shall be used by the managers for preliminary work. When the managers incur expenses for surveys or other preliminary work on any proposed improvement, all expenses connected with such work shall be included in the cost of construction of the proposed improvement. When the construction of the improvement is authorized by the managers the funds advanced from the preliminary fund shall be repaid out of receipts from assessments.

Subd. 3. [Repealed, 1963 c 834 s 26]

Subd. 4. The state of Minnesota and any department or political subdivision thereof may appropriate such sums as are necessary to pay its proportionate share of such preliminary expenses, determined by the managers according to the benefits that will probably accrue to the corporation from the contemplated improvements.

Subd. 5. The district court may order a preliminary fund for all works of the district instituted pursuant to section 112.47.

History: *1955 c 799 s 29; 1963 c 834 s 21,22; 1978 c 513 s 8; 1982 c 540 s 20; 1986 c 444*

112.63 WARRANTS.

The managers of any district may issue warrants of the district in payment of any contracts for the construction of any improvements, for all ordinary general expenses, and for all expenses incurred in making repairs, which have been approved by the managers only when there are sufficient funds available for payment in the district treasury.

History: *1955 c 799 s 30; 1969 c 1072 s 11*

112.64 LEVY FOR REPAIR OF IMPROVEMENT.

Subdivision 1. The board of managers shall be responsible for maintaining the projects of the district in such condition that they will accomplish the purposes for which they were constructed. The cost of normal or routine maintenance of the projects of the district, and the cost of removing obstructions and accumulations of foreign substances from a drainage system, shall be paid from the maintenance fund upon the order of the board of managers.

Subd. 2. For the purpose of creating a maintenance fund for normal and routine maintenance of a project, the board of managers is authorized to apportion and assess the amount of the fund against all the parcels of land and municipal corporations previously assessed for benefits in proceedings for the construction of the project. The assessment shall be made pro rata according to benefits determined. No assessment for the benefit of the maintenance fund shall be made when the fund exceeds 20 percent of the original cost of construction of the project. Upon receiving the assessment order from the board of managers, the auditors of the counties affected shall file for record in the office of the county recorder for the county a tabular lien statement covering the assessment. The assessment shall be collected as provided in the order in the same manner as provided in section 106A.731. Before ordering the levy of an assessment for the benefit of the maintenance fund, the board of managers, in its discretion, may give notice of a hearing on the matter.

Subd. 3. If the engineer certifies to the board of managers, in the annual report or otherwise, that an improvement of the district is in such a state of disrepair that it cannot be restored by normal and routine maintenance to the same condition as when originally constructed or subsequently improved, or that a ditch or channel must be widened or deepened, or that any improvement of the district must be altered or improved, in order to attain the level of operating efficiency contemplated at the time of the original construction, the board of managers, before ordering any repairs other than normal and routine maintenance, shall order the engineer to prepare and submit to the board of managers technical and cost specifications on the work necessary to restore, or improve the improvement to the desired level of operating efficiency. Upon receiving the engineer's report, the board of managers shall set a date for hearing on the report and give notice of the hearing in the same manner as in the original proceeding on the construction of the improvement. If upon hearing the board of managers finds that the repair or improvement is in compliance with the provisions, is necessary to accomplish the purposes of this chapter, and that the cost of the repair or improvement will not exceed its benefits, they may order the repair or improvement and assess the cost against the benefited properties. The cost shall be apportioned and assessed pro rata upon all lands and property that were assessed for the construction of the improvement. No single levy for repair shall exceed the amount of benefits originally determined. The board of managers shall file a copy of the order for levy with the auditor of each county which contains affected properties. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment and collection of taxes levied in drainage proceedings conducted under sections 106A.005 to 106A.811.

Subd. 4. If the managers find that the estimated cost of repair, including all fees and costs incurred for proceedings relating to it, is less than $20,000, it may have the work done by contract without advertising for bids.

History: *1955 c 799 s 31; 1965 c 775 s 1; 1967 c 634 s 13,14; 1973 c 712 s 13; 1976 c 181 s 2; 1982 c 540 s 21; 1985 c 172 s 122,123; 1986 c 444*

112.65 DRAINAGE SYSTEMS WITHIN DISTRICT.

Subdivision 1. The managers of a district shall take over when directed by the district court or county board any judicial or county drainage system within the district, together with the right to repair and maintain the same. Such transfer may be initiated by the district court or county board, or such transfer may be initiated by a petition from any person having an interest in the drainage system or by the managers. No such transfer shall be made until the district court or county board has held a hearing thereon. Due notice of the proposed transfer together with the time and place of hearing shall be given by two weeks published notice in a legal newspaper of general circulation in the area involved. All interested persons may appear and be heard. Following the hearing, the district court or county board shall make its order directing that the managers of a district take over the affected judicial or county drainage system, unless it appears that the take over would not be in the public welfare or public interest and would not serve the purpose of this chapter. When the transfer is directed all proceedings for repair and maintenance shall thereafter conform to the provisions of sections 106A.005 to 106A.811.

Subd. 2. Construction of all new drainage systems or improvements of existing drainage systems within the district shall be initiated by filing a petition with the managers of the district. In all proceedings for the improvement of existing drainage systems within the district, the managers shall conform to the provisions of section 112.49.

History: *1955 c 799 s 32; 1959 c 240 s 1; 1967 c 634 s 15,16; 1969 c 1072 s 12; 1982 c 540 s 22; 1985 c 172 s 124*

112.66 DAMAGE TO HIGHWAY OR BRIDGE BY PASSAGE OF EQUIPMENT.

In case it is necessary to pass any dredge or other equipment through a bridge or grade of any highway or railroad owned by any corporation, county, town, or municipality, the managers shall give 20 days notice to the owner of the bridge or grade so that the same may be removed temporarily to allow the passage of such equipment, or an agreement may be immediately entered into for such purposes. The owner of the bridge or grade shall keep an itemized account of the cost of removal and if necessary, of the replacing of the bridge or grade and the actual cost shall be paid by the district. In case the owner of the bridge or grade refuses to provide for the passage of the equipment, the managers may remove such bridge or grade at the expense of the district, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case the managers are prevented from doing so, the owner of the bridge or grade shall be liable for the damages resulting from the delay.

History: *1955 c 799 s 33*

112.67 CONTRACTS OF COOPERATION AND ASSISTANCE.

The managers may enter into contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, and the state government of this state or other states, or any department thereof, with drainage, flood control, soil conservation, or other improvement districts, in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the works of the district, or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets; to construct and maintain dikes or dams or other structures for the accomplishment of the purposes of this chapter.

History: *1955 c 799 s 34*

112.68 OTHER STATUTES APPLICABLE.

The provisions of sections 471.59 and 471.64, are hereby made applicable to districts organized under this chapter.

History: *1955 c 799 s 35*

112.69 CONSTRUCTION BY GOVERNMENTAL AGENCIES; PROCEDURE; CONVEYANCES TO FEDERAL GOVERNMENT.

Subdivision 1. Where an improvement is to be constructed within the district under a contract between the managers of said district and the state of Minnesota, or any department thereof, or by the United States of America, or any department thereof, wherein the cost of the construction is to be paid for by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are to be paid by the district, the managers shall forward a copy of the improvement plan to the board and director for their reports thereon; thereupon, they shall hold a public hearing on the proposed contract authorized by section 112.67 following publication once each week for two successive weeks prior to the date of the hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located. The last publication shall occur at least ten days before the hearing. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the area proposed to be assessed. Not less than ten days before the hearing notice by mail shall be given to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director and to each public body within the area to be assessed likely to be affected, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested for and against the proposed project or improvement and all questions relative thereto shall be determined upon evidence presented at the hearing. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the provisions and purposes of this chapter they shall make findings accordingly and authorize the project and enter into the proposed contract or other arrangement. Thereupon the managers shall appoint three disinterested freeholders of the state to act as appraisers. After the appraisers so selected subscribe to an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits or damages to all lands and properties affected by the proposed improvement. They shall make and file with the managers a detailed statement showing the actual damages that have resulted or will result to individuals, property, or corporations from the construction of the improvement and make and file with the managers a detailed statement and list of lands and other property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or by other means herein authorized.

Subd. 2. Upon the filing of the appraisers' report and the plans and engineering data prepared by the governmental agency the managers shall prepare a detailed statement of all costs including damages to be incurred by the district in the construction of the improvement. They shall within 35 days thereafter by order fix a time and place within the district for a hearing upon the appraiser's report. The managers shall cause notice to be given by publication and mailing as above provided for a hearing on a petition. At the time and place specified in the notice, the managers shall hear all parties interested for and against the confirming of the report; and may order and direct the modification of the assessment of benefits and damages, and amend or change the list of properties reported as benefited or damaged. If the amended reports include property not included in the original report the managers shall adjourn and cause to be published and mailed as in the original notice the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the benefits resulting from the construction will be greater than the assessments including damages they shall confirm the report. All persons or public corporations affected by the order may appeal therefrom as herein provided.

Upon the filing by the managers with the auditor of any county of a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, proceedings shall be had as provided in section 112.60.

Section 112.47 is not applicable to works of the district constructed under contract as provided in this section.

Subd. 3. When it is required that the board of managers acquire the fee simple estate or a lesser interest in real property pursuant to this section or convey to the United States government the fee simple estate or a lesser interest in real property, the managers shall, prior to the filing of the appraiser's report, record in the office of the county recorder of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the United States government which notice shall state the purpose for which the lands are to be taken. At least 20 days before the hearing upon the appraiser's report, notice of the hearing in addition to that required by subdivision 2 hereof shall be served upon the owners of the property to be acquired, in the same manner as the summons in a civil action, which notice shall describe the land, state by whom and for what purpose it is to be taken and give the names of all persons appearing of record or known to the managers to be the owners. The notice shall also state that appraisers have been appointed in the manner provided by subdivision 1 hereof, to determine the benefits and damages, and that a hearing will be held by the managers upon the appraiser's report at the time and place specified in the notice. When the managers have confirmed the appraiser's report listing the property benefited or damaged as provided in subdivision 2, the managers shall have all rights of possession and entry conferred in other cases of condemnation by chapter 117. Thereafter, the attorney for the managers shall make a certificate describing the land taken, the purpose for which taken, and reciting the fact of payment of all awards as determined by the appraisers appointed by the managers or judgments in relation thereto, which certificate, upon approval thereof by the managers, shall establish the right of the watershed district in the lands taken and shall be filed for record with the county recorder of the county in which the lands are situated, which record shall be notice to all parties of the title of the watershed district to the lands therein described. Thereafter the managers are authorized to convey such lands and interests acquired to the United States government, if necessary.

History: *1955 c 799 s 36; 1961 c 601 s 17; 1963 c 42 s 1; 1965 c 649 s 1; 1973 c 35 s 26; 1973 c 712 s 14; 1976 c 181 s 2; 1978 c 513 s 9*

112.70 [Repealed, 1963 c 798 s 16 subd 2]

112.71 USE OF WATER, CONTRACTS; NOTICE, HEARING.

The rights enjoyed by landowners, whether private or corporate, to the use of the waters of the district for any purpose shall continue as they existed at the time of the organization of the district and all such rights then existing shall be recognized and observed by the managers, but when improvements made by the district make possible a greater, better or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better or more convenient use of or benefit from such waters shall be the property of the district, and such rights may be leased or assigned by the district in return for reasonable compensation, as provided herein.

All leases, assignments, permits or contracts for the use of water shall be entered into only after a report has been made by the managers of such district to the board setting forth the terms and conditions of the lease, permit, or contract relative to the use of any property of the district. The secretary of the board shall give due notice thereof to all parties interested, by mail, and shall cause to be published notice of the application, stating therein the purpose of the application and the time and place of hearing thereon. At the time of hearing the board shall hear all interested persons for or against such proposed contract and make its order accordingly upon such conditions and restrictions as may be necessary to protect the interest of the district and of the public.

History: *1955 c 799 s 38; 1961 c 601 s 19*

112.72 OTHER DRAINAGE LAWS, EFFECT OF REFERENCE.

Whenever reference is made herein to any drainage laws of this state and sections thereof are referred to, the sections and provisions shall if not inconsistent with this chapter, be treated and construed as having the same force and effect, so far as the provisions of this chapter are concerned, as though herein set forth. Any amendments of such act or acts passed after the effective date of this chapter shall become applicable to this chapter.

History: *1955 c 799 s 39; 1963 c 834 s 23*

112.73 ANNUAL AUDIT.

The managers shall make such reports as are demanded by the state auditor. The managers shall cause to be made an annual audit of the books and accounts of the district. Such audit may be made by either a public accountant or by the state auditor. If the audit is to be made by the state auditor it shall be initiated by a petition of the resident freeholders of the district or resolution of the managers of the watershed district requesting such audit pursuant to the authority granted municipalities under the provisions of sections 6.54 and 6.55. If the audit is made by the state auditor the district receiving such examination shall pay to the state the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination. The revolving fund of the state auditor shall be credited with all collections made for any such examinations.

History: *1955 c 799 s 40; 1957 c 95 s 1; 1965 c 513 s 1; 1973 c 492 s 14*

112.74 EXISTING DISTRICTS MAY COME UNDER CHAPTER.

Any district heretofore organized under the provisions of Minnesota Statutes 1953, sections 111.01 to 111.42, or 112.01 to 112.33, may acquire the right to operate under and exercise all the rights and authority of this chapter, instead of the act under which it was organized, upon the filing by the governing board of such district, in the office of the court administrator of district court of the county in which its principal place of business is situate, a petition to the court asking that the district be granted such authority. The court administrator of district court, as directed by the judge, shall thereupon fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in each county having territory within such district. The court administrator of district court shall give written notice of the hearing to the secretary of the water resources board. If at the hearing the court finds that it is for the best interests of the district to be granted such authority, it may by order grant such petition. Thereafter the district may exercise the authority provided for in this chapter. Thereafter, upon petition by the managers, the name of the district, the number and distribution of the board of managers of the same shall be as the water resources board shall prescribe after notice and hearing. The distribution shall take effect upon the expiration of term of office of the director of the conservancy district as the term of office of each director expires. The appointments shall be made by the county commissioners as provided in Minnesota Statutes 1961, section 112.42, subdivision 3.

History: *1955 c 799 s 41; 1965 c 650 s 1; 1Sp1986 c 3 art 1 s 82*

112.75 [Repealed, 1973 c 712 s 16]

112.76 CORPORATE EXISTENCE OF CERTAIN DISTRICTS, TERMINATION.

The corporate existence of any district organized under the provisions of Minnesota Statutes 1953, sections 112.01 to 112.33, wherein no work has been performed during the five-year period immediately prior to April 23, 1955, shall be terminated unless within one year thereafter such district makes application for authority to continue its corporate existence under the provisions of this chapter. The procedure to provide a record of the termination of a district shall be initiated by a petition from

the Minnesota water resources board to the district court of the county in which its principal place of business is situated. Said petition shall contain a statement to the effect that no work was performed during the five-year period immediately prior to April 23, 1955 and that no application was made to continue the district's operation under this chapter. The court administrator of the district court, as directed by the judge, shall fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in each county having territory within such district. If the court finds that the facts in the petition exist it shall issue an order finding the fact of the termination of the district. A copy of such order shall be filed in the office of the secretary of state.

After April 23, 1955, no new district shall be organized under the provisions of Minnesota Statutes 1953, chapter 112.

The above procedure for termination shall apply with like force and effect to any district organized under the provisions of Minnesota Statutes 1961, sections 111.01 to 111.42, wherein no work has been performed during the 20-year period immediately prior to May 21, 1965. After May 21, 1965, no new district shall be organized under the provisions of Minnesota Statutes 1961, sections 111.01 to 111.42.

History: *1955 c 799 s 43; 1963 c 834 s 24; 1965 c 516 s 1; 1Sp1986 c 3 art 1 s 82*

112.761 PROCEEDINGS FOR ENLARGEMENT OF DISTRICT.

Subdivision 1. Proceedings for the enlargement of an existing district shall be initiated by a petition filed with the secretary of the board. The required signatures on a petition to enlarge shall be the same as prescribed for a nominating petition, provided, however, the percentages shall be calculated only with reference to the territory which is proposed to be added to the district. Such petition shall state:

(1) That the area to be added is contiguous to the existing district;

(2) That it can be feasibly administered by the managers of the existing district;

(3) The reasons why it would be conducive to the public health and welfare to add the area to the existing district;

(4) A map of the affected area;

(5) The name of the enlarged district, if other than that of the existing district; and

(6) A request for the addition of the proposed territory.

The petition shall be served and the board shall proceed in a manner as prescribed for a nominating petition. The requirement of notice, and public hearings shall be as prescribed for the nominating petition. Service of the petition shall be made upon any affected watershed district.

Subd. 2. Upon the hearing, if it appears to the board that the enlargement of the district as prayed for in the petition would be for the public welfare and public interest and the purpose of this chapter, would be served, it shall, by its findings and order, enlarge the district and file a certified copy of said findings and order with the secretary of state. The name of the district may be changed by order of the board if requested in the petition to enlarge the district.

Subd. 3. If the district, as enlarged, affects more than one county, distribution of the managers among the counties affected shall be as directed by the board in the order enlarging the district.

History: *1961 c 601 s 23; 1978 c 513 s 10*

112.77 [Repealed, 1959 c 272 s 2]

112.78 FAULTY NOTICES, EFFECT.

In any case where a notice is provided for in this chapter for any hearing or proceeding before the board, managers, or district court, if the board or managers or court finds that due notice was not given, it does not thereby lose jurisdiction, and the shall order notice to be given and continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance. In case the original notice was faulty only with reference to publication as to certain tracts, only the persons interested in those particular tracts need be notified by a subsequent notice. If the publication of any notice in any county was defective or not made in time, notice need be given only within the county in which notice was defective.

History: *1955 c 799 s 45*

112.79 HEARINGS, CONTINUANCES.

Whenever an order has been made and notice given for a hearing in any proceeding under this chapter, and the board or managers or court fail to appear at the time and place specified, the secretary of the board or managers or the court administrator of the district court shall continue the hearing to such other date as is deemed necessary and notify the board or managers or the court of the continuance and the date of hearing. The matter shall be continued to the date fixed by the secretary of the board or any manager, or the court administrator, without affecting the jurisdiction of the board or managers, or the court.

History: *1955 c 799 s 46; 1Sp1986 c 3 art 1 s 82*

112.791 [Repealed, 1965 c 873 s 3]
112.792 [Repealed, 1965 c 873 s 3]
112.80 [Repealed, 1965 c 873 s 3]

112.801 APPELLATE PROCEDURES AND REVIEW.

Subdivision 1. An appeal may be had to the district court or to the Minnesota water resources board by any party, or jointly by more than one, aggrieved by an order of the managers made in any proceeding and entered upon its record determining any of the following matters:

(1) The amount of benefits determined;

(2) The amount of damages allowed;

(3) Relative to the allowance of fees or expenses in any proceedings,

(4) Which affects a substantial right, or

(5) An order of the board of managers authorizing or refusing to establish a project and improvement in whole or in part.

Subd. 2. In all cases of appeal, the amount awarded by the jury or the board as finally determined shall stand for and in the place of the amount from which the appeal was taken.

Subd. 3. If an appeal is taken from an order authorizing an improvement, the trial of any appeals from benefits or damages in such proceedings shall be stayed pending the determination of such appeal. If the order authorizing be affirmed, any such appeal from benefits or damages shall then stand for trial as provided by this section. If such appeal be from an order refusing to authorize an improvement, and if the court or the board thereafter orders the improvement the secretary of the district shall give notice by publication of the filing of the order. Such notice shall be sufficient if it refers to the proposed improvement by general description and recites the substance of the order and the date of filing in the court.

Subd. 4. Any person or public corporation appealing on the first or second grounds named in subdivision 1, may include and have considered and determined benefits or damages affecting property other than that person's own. Notice of such appeal shall be served upon the owner or occupant of such other property or upon the attorney who represented such owner in the proceedings. Such notice of appeal shall be served upon the auditor of the county wherein the property is situated and upon the court administrator of the district court of the county wherein the principal place of business of the district is located, or upon the secretary of the board.

Subd. 5. To render the appeal effectual, the appellant shall file with such court administrator of the district court or the secretary of the board within 30 days of the date of such final order a notice of appeal which shall state the grounds upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the district where the property is situate of not less than $250 to be approved by the court administrator of the district court or the secretary of the board, as the case may be, conditioned that the appellant will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against the appellant and abide the order of the court or of the board, as the case may be.

Subd. 6. The issues raised by the appeal shall stand for trial by the board at a time and place fixed by it or by a jury, and if by a jury, shall be tried and determined at the next term of the district court held within the county in which the notice of appeal was filed, or in such other counties in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence over all other court matters of a civil nature. If there is more than one appeal to the board involving the same project for improvement, or if there is more than one appeal triable in one county, the court or the board may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. In case of appeal as to damages or benefits to property situate in the county other than the county where the principal place of business of the district is located, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the court administrator of the district court where the appeal is filed, shall make, certify and file in the office of the court administrator of district court of the county where the trial is to be had, a transcript of the papers and documents on file in the court administrator's office in the proceeding so far as they pertain to the matter on account of which the appeal is taken. After the final determination of such appeal, the court administrator of the district court where the action is tried shall certify and return the verdict to the district court of the county where the proceedings were instituted. If the appeal is to the board, the board shall file its decision with the secretary thereof. If the appeal is taken to the board from the order of the managers, the decision of such board may be reviewed by certiorari proceedings in the district court of a county in which the proposed project lies in whole or in part. If the appeal from the order of the managers is to the district court, and it appears to the court that there are involved facts, circumstances, or matters peculiarly or especially within the knowledge, functions, or duties of the Minnesota water resources board, the court may refer to such board as referee questions of fact within the scope of such knowledge, functions, and duties. Thereupon such board shall make its findings of fact upon the questions of fact so submitted to it and report the same back to the court.

Subd. 7. The board shall make a record of all matters tried by it on appeal or referred to it by the district court for findings of fact under the provisions of this section. Such record shall meet the requirements of a record of the trial of a matter in district court.

Subd. 8. All proceedings before the board shall be in conformity with sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62.

History: *1965 c 873 s 1; 1982 c 424 s 130; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

112.81 [Repealed, 1959 c 273 s 2]

112.82 AGGRIEVED PARTIES, RIGHTS.

Subdivision 1. **Establishment; appeal.** Any party aggrieved by a final order or judgment rendered on appeal to the district court or by the original order of the court made in any proceedings heard and tried before the court may appeal as in other civil cases.

Subd. 2. **Repair; appeal.** In any proceeding before the managers for the repair, improvement, maintenance, consolidation, or abandonment of any of the works of the district, the same right of appeal shall be had as in other civil cases.

History: *1955 c 799 s 49; 1983 c 247 s 48*

112.83 [Repealed, 1959 c 405 s 2]

112.84 DUE PROCESS OF LAW.

No person shall, under this chapter, be deprived or divested of any previously established beneficial uses or rights without due process of law.

History: *1955 c 799 s 51*

112.85 WITHDRAWAL OF TERRITORY.

Subdivision 1. Proceedings to withdraw any territory from an existing district shall be initiated by a petition filed with the secretary of the board. The required signatures on a petition for withdrawal shall be the same as prescribed for a nominating petition, provided, however, the percentages shall be calculated only with reference to the territory which is proposed to be withdrawn from the district. Such petition shall state that the territory so described has not received or will not receive any benefits from the operation of the district, that the district can perform the functions for which it was established without the inclusion of said territory and that said territory is not, in fact, a part of the watershed. The petition shall request the release of the described territory from the district.

The petition shall be served and the board shall proceed in a manner as prescribed for a nominating petition. The requirements for notices and public hearings shall be as prescribed for the nominating petition. Service of the petition shall be made upon any affected watershed district.

Subd. 2. Upon the hearing if it appears to the board that the territory as described in the petition has not and will not receive any benefit from the operation of the district and that the district can perform the functions for which it was established without the inclusion of said territory, and that said territory is not, in fact, a part of the watershed, the board may issue an order releasing the territory, or any part of said territory, as described in the petition. No lands shall be released which have been determined subject to any benefits or damages for any improvement previously constructed. The territory so released shall remain liable for its proportionate share of any indebtedness existing at the time of the order. Levies on the lands shall continue in force until fully paid. If the board shall determine that the order prescribing the distribution of managers should be amended following the withdrawal of any territory it may so direct in the order authorizing the withdrawal.

History: *1963 c 834 s 25; 1978 c 513 s 11; 1983 c 216 art 1 s 20*

112.86 CONSOLIDATION OF DISTRICTS.

Subdivision 1. Proceedings for the consolidation of two or more districts shall be initiated by a petition filed with the board. The petition shall be signed by each district affected and shall state:

(1) The names of the districts to be consolidated.

(2) That the districts are adjoining.

(3) That the consolidated districts can be feasibly administered as one district.

(4) The proposed name of the consolidated district.

(5) The reasons why it would be conducive to the public health, convenience and welfare to consolidate the districts.

(6) A request for the consolidation.

The petition shall be served and the board shall proceed in a manner as prescribed for a nominating petition. The requirement of notice, and public hearings shall be as prescribed for the nominating petition.

Subd. 2. Upon the hearing, if it appears to the board that consolidation of the districts as prayed for in the petition would be for the public welfare and public interest and the purpose of this chapter, would be served, it shall, by its findings and order, consolidate the districts and file a certified copy of said findings and order with the secretary of state. The name of the district may be changed by order of the board.

Subd. 3. The term of office of all managers of the districts consolidated shall end upon the order of consolidation. Distribution of the managers of the consolidated district shall be as directed by the board in the order of consolidation. The managers of the consolidated district shall be appointed from the managers of the districts consolidated. They shall be five in number and their first term shall be for one year, thereafter they shall be appointed as provided in this chapter.

Subd. 4. All of the assets, real and personal, of the districts involved and all legally valid and enforceable claims and contract obligations of the districts pass to the new district. Levies on the property of the districts consolidated shall continue in force until fully paid and all land shall remain liable for its proportionate share of any indebtedness existing at the time of the order.

Subd. 5. The overall plans of the existing districts shall become the overall plan of the consolidated district.

History: *1973 c 712 s 15*

112.87 DAMAGES; PAYMENT.

Section 117.155 shall not apply to any project to be financed by special assessment. When the damages for a project to be financed by special assessment are awarded and duly confirmed, the managers shall determine that the project's benefits exceed the total costs, including any damages awarded, and shall amend its statement filed with the county auditor pursuant to section 112.60, subdivision 1, to reflect the amount of damages awarded. Before entering upon any property for which damages were awarded in order to initiate the construction of the project, the managers shall pay the amount of damages awarded less any assessment against the property from the funds provided by the county board pursuant to section 112.60. In case of appeal of the amount of damages, no damages shall be paid until the final determination thereof.

History: *1978 c 513 s 12; 1979 c 50 s 11*

112.88 FEE FOR PERMIT; BOND.

Subdivision 1. A person applying for any kind of a permit required by the managers of a watershed district in a rule made pursuant to section 112.43, subdivision 1 (17), shall accompany the application with a permit application fee in an amount set by the managers not in excess of $10 to defray the cost of recording and processing the application.

Subd. 2. The managers of a watershed district may charge, in addition, a field inspection fee of not less than $35, which shall cover actual costs related to a field inspection, including investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after issuance of the permit.

Subd. 3. The fees in subdivisions 1 and 2 shall not be charged to an agency of the United States or any governmental unit in this state.

Subd. 4. The managers of a watershed district may require an applicant for a permit to file a bond with the managers in an amount set by the managers and conditioned on performance by the applicant of authorized activities in conformance with the terms of the permit.

History: *1978 c 513 s 13; 1986 c 444*

112.89 ENFORCEMENT.

Subdivision 1. A violation of a provision of this chapter or a rule, order or stipulation agreement made or a permit issued by the board of managers of a watershed district pursuant to this chapter is a misdemeanor.

Subd. 2. A provision of this chapter or a rule, order or stipulation agreement made or a permit issued by the board of managers of a watershed district pursuant to this

chapter may be enforced by criminal prosecution, injunction pursuant to section 112.43, subdivision 2, action to compel performance, restoration, abatement and other appropriate action.

History: *1978 c 513 s 14*

MINNESOTA STATUTES

CHAPTER 116A, PUBLIC WATER AND SEWER SYSTEMS

CHAPTER 116A

PUBLIC WATER AND SEWER SYSTEMS

116A.01 POWERS OF COUNTY BOARDS AND OF DISTRICT COURTS.

Subdivision 1. **Generally.** The county boards of the several counties except counties in the seven county metropolitan area, and the district courts are authorized to make all necessary orders for, and cause to be constructed and maintained, public water or sewer systems or combined water and sewer systems, including outlets, treatment plants, pumps, lift stations, service connections, mains, valves, hydrants, wells, reservoirs, tanks, and other appurtenances of public water or sewer systems, in any area of the county or judicial district not organized into cities, or in any area added to a public water or sewer system or combined water and sewer system by action taken in accordance with subdivision 4.

Subd. 1a. **Municipal authority.** Any county board that has established a water or sewer system or combined water and sewer system under the provisions of this chapter, or that has formed a district under the provisions of section 116A.02, subdivision 4, may acquire, construct, finance, operate and maintain the system under and exercise all the rights and authority and perform all the duties of a statutory city under chapters 117, 412, 429 and 475 and sections 115.46, 444.075 and 471.59, instead of this chapter, upon receiving authorization in accordance with this subdivision. To receive authorization the county board shall file, in the office of the court administrator of district court of the county, a petition to the court asking that the county board be granted such authority. The court administrator of district court, as directed by the judge, shall thereupon fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in the county. The court administrator of district court shall give written notice of the hearing to the Minnesota pollution control agency. If at the hearing the court finds that it is for the best interests of the county board to be granted such authority, it may by order grant such petition. Thereafter the county board is authorized to acquire, construct, finance, operate and maintain the water or sewer system or combined water and sewer system in the same manner and to the same extent accorded a statutory city under chapters 117, 412, 429 and 475 and sections 115.46, 444.075 and 471.59.

Subd. 2. **Establishment of system.** Upon receipt of a petition for the establishment of a water or sewer system or combined water and sewer system in any area of the county not organized into cities, or in any area to be included within a system in accordance with subdivision 4, and after determining the sufficiency of the petition as provided in section 116A.02 and making such investigations and surveys as it considers necessary to ascertain whether it should be granted, the court or board may by resolution provide for the establishment of such a system, cause plans and specifications to be prepared for water system facilities adequate to obtain, store, treat, and distribute water for domestic, commercial, and industrial use therein, or sewer system

facilities adequate to collect, treat, and dispose of sewage and waste in a sanitary manner, or both such types of facilities, contract for the construction of such facilities, acquire land and easements for the purpose by purchase, gift, condemnation, or other lawful means, establish, collect, and revise charges for the use and availability of water or sewer service or both to all premises within the area to which service is furnished or made reasonably available, and for connection to the facilities, in the manner provided in section 444.075; levy special assessments upon properties specially benefited by the construction of the facilities; issue bonds of the county to finance such construction as provided in section 116A.20, and require hook up or attachment to the system by all residents in the service area.

Subd. 3. **Systems extending into more than one judicial district.** In case any proposed sewer or water system extends into two or more judicial districts, proceedings may be commenced before the district court of any of the districts, and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the sewer or water system.

Subd. 4. **Area to be served.** The area to be served by any public water or sewer or combined system or to be included in a district formed under section 116A.02, subdivision 4, may include any part or all of the area of any city which by resolution of its governing body requests that its facilities be connected to the system, or that all or any part of the area within its corporate limits be included in the area to be served by the system or included in the district. For the purpose of any petition filed or special assessment levied with respect to any system, the entire area to be served within any city shall be treated as if it were owned by a single person, provided that in any event mailed notice of all hearings required under this chapter shall also be sent to the actual owners of such property to the same extent and in the same manner provided for owners of property located in an area to be served by the system outside of any city, and the governing body shall exercise all the rights and be subject to all the duties of an owner of the area, and shall have power to provide for the payment of all special assessments and other charges imposed upon the area with respect to the system by the appropriation of money, the collection of service charges, or the levy of taxes, which shall be deemed special levies and shall be subject to no limitation of rate or amount, provided that in the alternative the board or boards and the court with jurisdiction over the system, or a water and sewer commission to the extent authorized by the board or boards and the court under section 116A.24, may, to the extent authorized by resolution of the governing body of the city, exercise within the area of the city served by the system, or any extensions of the system, the same powers granted to the county board or boards and the court for areas located outside any city by this chapter.

Subd. 5. **Exclusion of land from area to be served.** After any land has been included in the area to be served by any public water or sewer or combined system or in a district formed under section 116A.02, subdivision 4, the county board, or if two or more county boards are involved, the court, upon petition of the county boards or the commission formed under section 116A.24, may at any time order the exclusion from such area or district of any land that has not been specially assessed under section 116A.17, upon determining that the land is contiguous to land located outside the area or district and will not be served by such system, provided that either the owner or owners of the land first consent to the exclusion, or the proposed exclusion first be considered at one of the public hearings required under this chapter and be made a part of the order thereafter required of the board or court or at a separate public hearing on the proposed exclusion after notice of the hearing has been given in the manner and to the extent required in section 116A.08, subdivision 1.

History: *1971 c 916 s 1; 1973 c 123 art 5 s 7; 1973 c 322 s 1; 1973 c 407 s 1; 1973 c 702 s 25; 1975 c 294 s 1-3; 1976 c 239 s 22; 1977 c 442 s 1-4; 1Sp1986 c 3 art 1 s 82*

116A.02 PETITION.

Subdivision 1. **Form.** Before any public water or sewer system or combined water and sewer system authorized by sections 116A.01 to 116A.26 is established, a petition

therefor shall be filed with the county auditor, if for a system entirely within one county, or with the court administrator of the district court, if for a system within two or more counties. The petition shall be signed by the owners of at least 50 percent of the area, exclusive of the holders of easements for electric or telephone transmission and distribution lines of lands described in the petition as those to be served by the proposed system, and shall state that the system will be of public benefit and utility and will promote the public health and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. The petition may be signed by the authorized representative of any municipal corporation or by the commissioner of transportation, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction. Petitioners may employ an attorney to represent them in all proceedings pursuant to sections 116A.01 to 116A.26, and said attorney shall be compensated as ordered by the board or court.

Subd. 2. **Withdrawal.** After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the auditor or clerk.

Subd. 2a. **Use of petitioner's land.** Each owner who joins in the petition or who prior to June 3, 1977 has signed a petition for such a district, grants to the county or counties or commission, if the system is thereafter established, an easement to use the owner's land within the system area for the purposes of the system in any manner that will not permanently and substantially disturb the owner's use, including the right to enter upon that land temporarily for construction or maintenance of the system, if notice that the petition has the effect of granting the easement is set forth in the petition or is otherwise given in writing to the owner prior to the owner's execution of the petition, or the petition was signed prior to June 3, 1977. Unless an emergency exists, the owner may require one week's notice before entry upon the property is permitted pursuant to this subdivision.

Subd. 3. **Proceeding initiated by county board.** Any county board, by duly adopted resolution, and without a petition filed therefor, may initiate the proceedings for the establishment of a water or sewer system or combined water and sewer system as provided in sections 116A.01 to 116A.26. The proceedings thereafter shall be the same as for proceedings initiated by petition except that no bond need be filed. If any proceeding initiated by resolution of a county board is dismissed, the county shall pay all expenses connected with such proceeding.

Subd. 4. **Initial formation of district.** A county board, or boards if more than one county is involved, by duly adopted resolution, may, without a petition filed therefor and after making such investigations as the board or boards consider necessary, form a water or sewer district or combined water or sewer district within the county or counties and may expend available funds for this purpose without the board or, if more than one county is involved, the court first ordering the establishment of a water or sewer system or combined water and sewer system as provided in sections 116A.01 to 116A.26. Thereafter the county board or court may establish for all or a part of the district one or more water systems or sewer systems or combined water and sewer systems either by petition or on the initiative of the board of any county located in whole or part within the district, as provided in sections 116A.01 to 116A.26, except that no bond need be filed whenever the county board elects to proceed on its own initiative. If a proceeding is initiated by resolution of a county board and is dismissed, the county shall pay the expenses connected with the proceeding.

History: *1971 c 916 s 2; 1973 c 322 s 2; 1975 c 294 s 4,5; 1976 c 166 s 7; 1977 c 442 s 6; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.03 PETITIONERS' BOND.

Upon the filing of a petition and before any action is taken thereon, one or more of the petitioners shall make and file a bond payable, in case of a county system, to the county, and in case of a judicial system, to the counties named in the petition, in the

sum of not less than $2,000, with good and sufficient sureties, to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the system or other improvement petitioned for. In lieu of a bond cash may be deposited and forfeited to the county or counties in the event the proceedings are dismissed and if for any reason no contract is entered into for construction of the system or other improvement petitioned for. If the project is approved, the cash so deposited shall be returned to the petitioners.

History: *1971 c 916 s 3*

116A.04 INSUFFICIENT BOND; EXPENSES NOT TO EXCEED PENALTY OF BOND.

If it shall appear at any time prior to the making of the order establishing the system that the bond of petitioners is insufficient in amount to protect the county or counties from loss on account of any costs or expenses incurred or to be incurred, the court or board shall require an additional bond. In such event, all further proceedings shall be stayed until such bond is furnished, and if additional bond is not furnished within the time fixed by the board or court, the proceedings may be dismissed.

In all proceedings, the expenses incurred prior to establishment shall not exceed the penalty named in the bond or bonds given by the parties. No claim in excess of the amount of the bond or bonds shall be audited or paid by direction of the board or court unless one or more of the parties in the proceeding shall, within such time as the board or court directs, make and file an additional bond with sufficient sureties in such amount as the board or court directs.

History: *1971 c 916 s 4*

116A.05 DISMISSAL OF PROCEEDINGS.

Sixty percent of the petitioners may dismiss a proceeding under the provisions of sections 116A.01 to 116A.26 at any time prior to the order establishing the improvement, upon payment of all lawful costs, charges, expenses, and fees in the proceeding.

History: *1971 c 916 s 5*

116A.06 ENGINEER.

Subdivision 1. **Appointment.** Upon filing of the petition and bond, the board or court shall, within 30 days, by order appoint an engineer to make a preliminary survey within the time fixed in the order. The engineer shall act as engineer throughout the proceeding unless otherwise ordered.

Subd. 2. **Qualification.** The engineer shall within ten days after appointment take and subscribe an oath to faithfully perform the assigned duties according to the best of the engineer's ability, and give a bond in an amount fixed by the board or court, but not less than $5,000, with good and sufficient surety, payable to the county or counties affected by the proposed improvement for their benefit and for the use of all parties aggrieved or injured by any negligence or malfeasance by the engineer while in any manner employed in the proceedings, conditioned that the engineer will diligently, honestly, and using the best skill and ability, during the full period of employment, perform the duties as engineer. The bond shall be approved by the auditor or court administrator, and the aggregate liability of the surety for all such damages shall not exceed the amount of the bond. In case of a change of engineers, each succeeding engineer shall make and file the required oath and bond.

Subd. 3. **Consulting engineer.** After appointment of the engineer, and during the pendency of any proceeding or during the construction of the system, the board or court may employ an engineer as a consulting engineer in the proceeding. The consulting engineer shall advise the engineer and the board or court as to engineering matters and problems which may arise in connection with the system. Compensation shall be fixed by the board or court.

History: *1971 c 916 s 6; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.07 PRELIMINARY SURVEY AND REPORT.

The engineer shall promptly examine all matters set forth in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable the engineer to determine whether it is necessary and feasible, and report accordingly. If some plan other than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. Upon completion of the survey and report, the engineer shall file the report in duplicate with the auditor or clerk.

History: *1971 c 916 s 7; 1986 c 444*

116A.08 PRELIMINARY HEARING.

Subdivision 1. **Notice.** Upon the filing of the report of the engineer, the auditor shall promptly notify the board, or the court administrator shall promptly notify the judge, thereof, and the auditor, or the court administrator with the approval of the judge, shall by order fix a time for the hearing thereon, not more than 60 days after the date of the order. Not less than ten days before the time of hearing, the auditor or court administrator shall give notice by mail of the time and place of hearing to the petitioners and the owners of the lands and properties, and corporations, public or private, likely to be affected by the proposed improvement as shown by the engineer's report. Notice also shall be published in the official papers covering the area of the proposed system called for in the petition, at least once not less than three weeks before the hearing.

Subd. 2. **Hearing.** The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties interested may appear and be heard.

Subd. 3. **Sufficiency of petition.** The board or court shall examine the petition, and if the petition is found sufficient as required by law, shall so find. If the petition is found insufficient in that it is not signed by the requisite number of owners, or otherwise, the hearing shall be adjourned and the petition referred back to the petitioners for such action thereon as may be advised. The petitioners, by unanimous action, may thereupon amend the recitals in the petition. They may procure the signatures of additional owners as added petitioners. At the adjourned hearing, if the petition is found insufficient, the proceedings shall be dismissed.

Subd. 4. **Dismissal.** At the hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, and no plan is reported by the engineer where by it can be made feasible, or that it is not of public benefit or utility, the petition shall be dismissed.

Subd. 5. **Findings and order.** If the board or court is satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, it shall so find and by order shall designate any changes to be made in the proposed improvement. Changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement. Thereafter the petition shall be treated as modified accordingly.

Subd. 6. **Effect of findings.** The findings shall be construed as conclusive only as to the sufficiency of the petition, the nature and extent of the proposed plan and the need of a permanent survey, and only as to the persons or parties shown by the engineer's preliminary report as likely to be affected by the improvement. All questions relative to the practicability and necessity of the proposed improvement shall be subject to further investigation and consideration at the final hearing.

History: *1971 c 916 s 8; 1Sp1986 c 3 art 1 s 82*

116A.09 ORDER FOR DETAILED SURVEY.

Upon the filing of the order as specified in section 116A.08, the board or court shall order the engineer to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, together with an estimate of the total cost of construction of the system, and report the same to the board or court with all reasonable dispatch. The cost estimate shall include the amounts payable to contractors at and prior to completion of construction in accordance with the plans and specifications; all court costs, estimated damages payable as reported by the viewers in accordance with section 116A.11, the cost of acquisition of all lands and easements required, the cost of necessary engineering, financial, legal, and other professional service, the cost of printing, publication, and mailing of all required notices of court proceedings, hearings, and bond sales, interest estimated to accrue on money to be borrowed for the system from the date or dates of borrowing to the initial date or dates of collection of special assessments or revenues of the system sufficient to carry current interest cost; and all other items of expense incurred and estimated to be incurred in the establishment of the system from its inception to its completion. The board or court may direct the engineer to include in the report an assessment roll based upon calculation, by the county auditor or auditors with the assistance of the engineer or another qualified person selected by the board or court, of the proper amount to be specially assessed for the system against every assessable lot, piece, or parcel of land, without regard to cash valuation. The assessment roll shall be based upon the engineer's estimate of the total cost, but the board or court may direct the engineer also to calculate the expenses of operation of the system when completed, the times and numbers of connections thereto from buildings on individual lots, pieces, and parcels of land, the rates and amounts of connection charges and periodic use charges which may be made for the use and availability of the service of the system, the net revenues, over and above the current cost of operation and maintenance, which are estimated to be available, after completion, for the payment of principal and interest on money borrowed for the system, and the amounts by which the special assessments to be collected annually may be reduced or their payment deferred if such net revenues are realized.

History: *1971 c 916 s 9; 1973 c 322 s 3; 1977 c 442 s 7; 1986 c 444*

116A.10 ENGINEER'S SURVEY AND EXAMINATION.

Upon the filing of the order calling for a detailed survey, the engineer shall prepare the complete set of plans, specifications and estimates of cost, and shall make a complete report in duplicate of the work and recommendations to the board or court, including therein all maps and profiles, and shall file the report with the auditor or court administrator. If the report is filed with the court administrator, a complete copy also shall be filed with the auditor of each county affected. After final acceptance of the system, the engineer shall make revisions of the plan, profiles and designs of structures to show the project as actually constructed on the original tracings, and shall file the revisions in duplicate with the auditor or court administrator. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and may recommend the time and manner in which the work or any section shall be done.

History: *1971 c 916 s 10; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.11 VIEWERS; APPOINTMENT; QUALIFICATION.

Subdivision 1. **Appointment.** Following the filing of the order for a detailed survey the board or court shall make an order appointing as viewers three disinterested resident freeholders of the county or counties affected.

Subd. 2. **Qualification.** Within 30 days after the filing of the final report and survey of the engineer, the auditor or court administrator shall make an order designating the time and place of the first meeting of the viewers and shall issue to the viewers a certified copy of the order appointing them and the order designating the time and

place of their first meeting. At the meeting and before entering upon their duties, the viewers shall take and subscribe an oath to faithfully perform their duties.

Subd. 3. **Failure to qualify.** If any viewer shall fail to qualify at the meeting, the auditor or court shall designate some other qualified person to take that viewer's place.

Subd. 4. **Viewers; duties.** The viewers, with or without the engineer, shall estimate damages to all lands and properties affected by the proposed system and shall report their findings. The report shall show in tabular form the description of each lot and tract or fraction thereof, under separate ownership, damaged and the names of the owners as the same appear on the current tax duplicate of the county. Estimated damages shall be reported on all lands owned by the state the same as upon taxable lands. The viewers shall report all estimated damages that will result to all railways and other utilities, including lands and property used for railway or other utility purposes. In case the viewers are unable to agree, each viewer shall state separately that viewer's findings on any matter disagreed upon. A majority of the viewers shall be competent to perform the duties required of them by sections 116A.01 to 116A.26.

Subd. 5. **Filing of viewers' report.** Upon the completion of their work, the viewers shall file their report with the auditor or court administrator. They shall file with the report a detailed statement showing the actual time they were engaged and expenses incurred and shall be reimbursed at such a rate as determined by the board or court. The viewers shall perform their duties and make their report at the earliest possible date following their first meeting. If the report be filed with the court administrator, a copy thereof shall also be filed with the auditor of each county affected.

History: *1971 c 916 s 11; 1977 c 442 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.12 SECOND HEARING.

Subdivision 1. **Time.** Promptly after the filing of the viewers' report and the engineer's survey the auditor, or the court administrator with the approval of the judge, shall fix a time and place for hearing on the petition and the engineer's and viewers' reports. The hearing shall not be less than 25 nor more than 50 days from the date of the notice thereof. The auditor shall notify the members of the county board of the time and place of the meeting as provided by law.

Subd. 2. **Form of notice.** The notice shall state the pendency of the petition, that the engineer's and viewers' reports have been filed, the time and place set for the hearing, and, if an assessment roll has been prepared in accordance with section 116A.09, that hearing will also be held on the special assessments proposed therein. The notice shall contain a brief description of the proposed system in general terms, the area proposed to be assessed, and the lands and properties damaged thereby as shown by the engineer's and viewers' reports. It shall be sufficient if the lands affected are listed in narrative form by governmental sections or otherwise.

In judicial proceedings, separate notices may be prepared, published, posted and mailed in each county affected, showing only that portion of the water or sewer system or combination thereof and the descriptions of the properties affected in the county.

Subd. 3a. **Persons entitled to notice; publication.** The auditor or court administrator shall cause notice of the time and place of the hearing to be given to all persons interested by publication, posting and mailing. The publication shall be made no less than three weeks before the date of the hearing. A printed copy of the notice of hearing made for each county shall be posted within one week after the beginning of publication at the front door of the court house in each county. Within one week after the beginning of publication, the auditor or court administrator shall give notice by mail of the time and place of the hearing to all persons, corporations, and public bodies affected by the proposed system as shown by the engineer's and viewers' reports. The notice mailed to the owner of each parcel damaged by the improvement shall describe the parcel and state the amount of the damages as ascertained by the viewers. The notice mailed to the owner of each parcel appearing on the assessment roll, if filed for hearing at this time, shall describe the parcel and state the amount of the cost potentially assessable

thereto as set forth in the assessment roll. Ownership of the respective parcels shall be established as provided in section 116A.17, subdivision 1.

Subd. 4. **Defective notice.** If notice is not given or is defective, the auditor or court administrator shall require the same to again be fully given.

Subd. 5a. **Jurisdiction.** Upon due publication, posting and mailing of the notice provided in this section, the board or court shall have jurisdiction of all lands and properties described in the engineer's and viewers' reports, and of all persons and corporations, municipal or otherwise, named therein, and all persons or corporations having any interest in any mortgage, lien or encumbrance against any of the lands or properties referred to in such reports.

Subd. 6. **Findings and order.** At the time and place specified in the notice, or at any adjournment thereof, the board or court shall consider the petition for the water or sewer system, together with all matters pertaining to the engineer's and viewers' reports, and consider all oral or written testimony presented by interested parties. The board or court shall have authority to amend the engineer's and viewers' reports as it deems necessary or proper. If the board or court shall find that the engineer's and viewers' reports have been made and all other proceedings in the matter had in accordance with law, that the estimated benefits are greater than the total estimated cost, including damages, that the benefits and damages have been duly determined, that the proposed water or sewer system will be of public utility and benefit, and will promote the public health, and that the proposed system is practicable, then the board or county shall by order containing such findings establish the water or sewer improvement and adopt and confirm the viewers' report as made or amended.

Subd. 7. **Assessment roll; payments.** If an assessment roll has been made and filed, the board or court may take action with respect thereto at the hearing or at any adjournment thereof in the manner provided in section 116A.17, provided that the board or court may permit prepayment of any assessment in full, without interest, within any stated period from the date of confirmation of the assessments, and may provide that the first installment shall be payable in the year following the expiration of such period. The board or court may in its order confirm the special assessments in the full amounts required to pay the total estimated cost of the system, as set forth in the assessment roll, or may confirm them at any fraction not less than 25 percent thereof. If special assessments are confirmed in any amount less than the total cost of the system as finally ascertained, the board or court may at any subsequent time make supplemental assessments as provided in section 116A.18, to the full amount required to pay the total cost of the system including the principal of and interest on all bonds issued to finance the system.

Subd. 8. **Orders; special assessments.** No order shall be entered confirming special assessments for any system under the provisions of this section or section 116A.17 unless it is determined that the amount of the special assessments confirmed in the order, and to be extended upon the tax rolls in each year of the term of any bonds issued to finance the system, together with interest payable on such assessments, the taxes, if any, and the net revenues to be received in excess of the cost of operation of the system during the same period, will be sufficient to pay all of such bonds and interest thereon when due. The board or court may make this determination in the order establishing the system or by subsequent order, based upon the engineer's report and such other investigation as it may deem necessary, whether or not special assessments are finally confirmed at the time of the entry of such order.

Subd. 9. **Jurisdiction for special assessments; enlargement of assessable area.** The board or court, after ordering the establishment of any water or sewer or combined system, shall retain jurisdiction thereof for the purpose of the levy of special assessments therefor, unless confirmed by the order establishing the system, the levy of supplemental assessments, reassessments, and reapportionment assessments when required, the approval of all contracts for construction, extension, and improvement of the system, and the enlargement of the area assessable for the original system and any extensions or improvements when determined to be necessary or expedient and in the

public interest. Proceedings for enlargement of the assessable area shall be taken in the same manner as provided for establishment of the system in sections 116A.01 to 116A.12, except that the owner of any property may petition for the inclusion of such property in the area and for connection to the system, and the board or court may grant such petition with or without further hearing as it may deem expedient. No hearing shall be required on any improvement or extension, but proceedings for contracting and levying special assessments for any improvement or extension shall be taken in accordance with the provisions of sections 116A.13 to 116A.19.

Subd. 10. **Damages, payment.** When damages are awarded and duly confirmed with respect to any property, the board or court may order the same paid and provide for the filing with the county recorder of the county in which the property is located a copy of the viewers' report and the order confirming the damages. Thereafter the board or court or commission may enter upon the property for the purpose of constructing or maintaining the water or sewer or combined system as contemplated in the viewers' report without first securing for that purpose a separate easement by purchase, condemnation under chapter 117, or otherwise. In case of appeal, the damages shall not be paid until the final determination thereof. If there is doubt as to who is entitled to the damages, the board or court may pay the same to the court administrator of the district court in the county in which the property is located, and the damages shall be disbursed by the court administrator, upon order of the district court, to the persons thereunto entitled.

History: *1971 c 916 s 12 subds 1,2,4; Ex1971 c 20 s 5-8; 1973 c 322 s 4 8; 1975 c 294 s 6; 1977 c 442 s 5; 1Sp1986 c 3 art 1 s 82*

116A.13 LETTING CONTRACT.

Subdivision 1. After the filing of the order ordering the improvement, the auditor and the county board, in the instance of a county system, and the auditors of the respective counties, or a majority of them, in the instance of a judicial system, shall proceed to let the job of constructing the system. In judicial systems the auditors shall hold the letting at the office of the auditor of the county in which the proceedings are pending.

Subd. 2. If it shall appear at the expiration of 30 days from the filing of the order ordering the improvement, that one or more appeals have been taken involving the question of damages, no contract shall be let until the appeals have been determined, unless ordered by the board or court. Application for such order may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

Subd. 3. The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than $3,000, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job or in sections. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check or a bond furnished by an approved surety bonding corporation payable to the auditor or auditors for not less than ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 116A.15.

Subd. 4. The engineer shall attend the letting and no bid shall be accepted without the engineer's approval as to compliance with plans and specifications.

Subd. 5. The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest responsible bidder or bidders therefor.

Subd. 6. Bids shall not be entertained which in the aggregate exceed by more than 30 percent the total estimated cost of construction.

Subd. 7. The auditor, with such chair, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring that party to construct the same in the time and manner and according to the plans and specifications and the contract provisions as set forth in sections 116A.01 to 116A.26.

History: *1971 c 916 s 13 subds 1-7; 1986 c 444*

116A.14 PROCEDURE WHEN CONTRACT NOT LET.

Subsequent to the establishment of any water or sewer system, if no bids are received except for a price more than 30 percent in excess of the engineer's estimate proceedings may be had as follows:

If it shall appear to the persons interested in said system that the engineer made an error in the estimate or that the plans and specifications could be changed in a manner materially affecting the cost of the improvements without interfering with the efficiency thereof, then any of said persons may petition the board or court so stating and asking that an order be made reconsidering and rescinding the order theretofore made establishing the system, and that the engineer's and viewers' reports be referred back to the engineer and to the viewers for further consideration.

Upon presentation of such petition, the board or court shall order a hearing, therein designating the time and place for hearing, and cause notice thereof to be given by publication in the same newspapers where the notice of final hearing was theretofore published.

At the time and place specified in the order and notice, the board or court shall consider the petition and hear all interested parties.

Upon said hearing, if it shall appear that the engineer's original estimate was erroneous and should be corrected, or that the plans and specifications could be changed in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and further, that upon said correction or modification, a contract could be let within the 30 percent limitation then the board or court may, by order, authorize the engineer to amend the report. If the changes recommended by the engineer in any manner affect the amount of damages to any property, the viewers' report shall be referred back to the viewers to reexamine the damages and report the same to the board or court.

The board or court may continue the hearing to give the engineer or the viewers additional time for the making of their amended reports and in such case the jurisdiction of the board or court shall continue in all respects at the adjourned hearing.

Upon said hearing the board or court shall have full authority to reopen the original order establishing said system, and to set said order aside, and to consider the amended engineer's report and the amended viewers' report, if any, and to make findings and an order thereon the same as is provided in section 116A.12. All proceedings thereafter taken shall be the same as is provided upon the original findings and order of the board or court.

History: *1971 c 916 s 14; 1986 c 444*

116A.15 CONTRACT AND BOND.

Subdivision 1. **Provisions.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contractor shall make and file with the auditor or court administrator a bond, with good and sufficient surety, to be approved by the auditor or court administrator, in a sum not less than 100 percent of the contract price of the

work. Every such contract and bond shall embrace all the provisions required by sections 116A.01 to 116A.26 and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. The bond shall provide that the bonding agents shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing itself injured by such failure, may maintain an action upon such bond in its own name, and actions may be successive in favor of all persons so injured, provided, however, that th...ggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

Subd. 2. **Changes during construction.** The contract shall give the engineer the right, with the consent of the board or court, to modify the reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the water or sewer system or substantially alter its original character, or will increase its total cost by more than ten percent of the total original contract price, unless determined by the board or court to be necessary to complete the system described in the original plans and specifications in such manner as to make it usable for the purpose contemplated.

History: *1971 c 916 s 15 subds 1,2; 1973 c 322 s 9,10; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.16 APPORTIONMENT OF COST.

The cost of any water or sewer or combined system and of any improvement or extension thereof, or any part of such cost, may be assessed upon property benefited thereby, based upon the benefits received, whether or not the property abuts on the improvement. If less than all of the cost is assessed, the remainder, including the principal of and interest on all bonds issued to pay the cost, shall be paid or reimbursed to the county or counties paying it from the net revenues from time to time received, in excess of the current costs of operating and maintaining the system, from the establishment and collection of charges for connection to the system and for service furnished and made available by it to any person, firm, corporation, or political subdivision or from any federal or state grant moneys, or from any combination of these receipts.

History: *1971 c 916 s 16; 1973 c 322 s 11; 1977 c 442 s 9*

116A.17 ASSESSMENT PROCEDURE AND FINAL HEARING.

Subdivision 1. **Calculation, notice.** At any time after the expense incurred and to be incurred in the completion of a water or sewer or combined system, or of any subsequent improvement or extension thereof, has been calculated under the direction of the board or court the county auditor or auditors, with the assistance of the engineer or another qualified person shall calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation. The proposed assessment roll shall be filed with the county auditor and open to public inspection. In a judicial proceeding the assessment roll shall be filed with the county auditor in each county wherein assessments are to be levied. The auditor or court administrator shall then, under the board's or court's direction, publish notice of a hearing in the official papers covering the area of the improvement to consider the proposed assessment. The notice shall be published in the newspaper at least once and shall be mailed to the owner of each parcel described in the assessment roll. For the purpose of giving mailed notice under this subdivision, owners shall be

those shown to be such on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, but other appropriate records may be used for this purpose. Publication and mailing shall be no less than two weeks prior to the hearing. Except as to the owners of tax exempt property or property taxed on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived the mailed notice unless that owner has requested in writing that the county auditor or county treasurer, as the case may be, include that owner's name on the records for such purpose. The notice shall state the date, time, and place of the meeting, the general nature of the improvement, the area proposed to be assessed, that the proposed assessment roll is on file with the auditor, and that written or oral objections thereto by any property owner will be considered.

Subd. 2. **Adoption; interests.** At the hearing or at any adjournment thereof the board or court shall hear and pass upon all objections to the proposed assessment, whether presented orally or in writing. The board or court may amend the proposed assessment as to any parcel and by resolution adopt the same as the special assessment against the lands named in the assessment roll. Notice of any adjournment of the hearing shall be adequate if the minutes of the meeting so adjourned show the time and place when and where the hearing is to be continued, or if three days notice thereof be published in the newspaper. The assessment, with accruing interest, shall be a lien upon all private and public property included therein, from the date of the resolution adopting the assessment, concurrent with general taxes, but the lien shall not be enforceable against public property as long as it is publicly owned, and during such period the assessment shall be recoverable from the owner of such property only in the manner and to the extent provided in section 435.19. All assessments shall be payable in equal annual installments extending over such period, not exceeding 30 years, as the board or court may direct. The first installment shall be payable on the first Monday in January next following the adoption of the assessment and its extension on the tax rolls, which shall be completed as soon as practicable; except that the board or court may direct the p: ment of the assessment on one or more lots, pieces, and parcels of land to be deferred for a specified period, or until it is connected to the system, or to be extended over a longer period not exceeding 50 years, if it finds that such method of payment in any case will be more commensurate with the benefits to be received by the property and that the net revenues of the system will be sufficient to meet any deficiency in funds available to pay principal and interest when due on bonds to be issued to finance the system, resulting from deferment or extension of such assessment payments. All assessments not paid in full within 30 days from the date of confirmation of the assessments shall bear interest at the rate fixed by the board or court, but not exceeding eight percent per annum. To the first installment shall be added interest on the entire assessment from the date of levying the assessment until December 31 of the year in which the first installment is payable; provided that the board or court, if payment of the first installment on any property is deferred, may provide that interest during the period of the deferment shall be paid annually, or shall be forgiven in whole or in part, or, if not paid or forgiven, shall be added to the principal amount of the special assessment payable in annual installments after the expiration of the period of deferment. To each installment after the first one there shall be added interest for one year on all unpaid installments. In lieu of the method of payment provided above, special assessments may be made payable in equal annual installments including both principal and interest, each in the amount annually required to pay the principal over such period with interest at such rate as previously determined not exceeding the maximum period and rate specified. In this event no prepayment shall be accepted without payment of all installments due to and including December 31 of the year of prepayment, and the original principal amount reduced only by the amounts of principal included in such installments, computed on an annual amortization basis. No special assessments levied under the provisions of section 116A.12 or this section shall be subject to deferment under the provisions of section 273.111, subdivision 11, or of any other law except this subdivision.

Subd. 3. **Assessment roll and prepayment.** After the adoption of the assessment the auditor shall prepare a final assessment roll with each installment of the assessment and interest thereon set forth separately and shall extend same on the proper tax lists of the county. All assessments and interest thereon shall be collected and paid over in the same manner as other county taxes. The owner of any property so assessed may, at any time before the assessment has been extended on the tax lists pay the whole of the assessment on such property with interest accrued to the date of payment, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption thereof, and except as hereinafter provided, that owner may at any time prior to November 15 of any year prepay the whole assessment remaining due with interest accrued to December 31 of the year in which said prepayment is made.

Subd. 4. **Collection; tax exempt property.** On the confirmation of any assessments the auditor shall notify the county board of commissioners of the amount payable by any county and shall mail a notice to the clerk or recorder of any other political subdivision specifying the amount payable by the political subdivision, and to the owner of any right-of-way at its principal office in the state, a notice specifying the amount payable on account of any right-of-way. The amount payable on account of any right-of-way or public property or by any city connected to the system shall be payable to the water or sewer system's special fund and shall be payable in like installments and with like interest and penalties as provided for in reference to installments payable on account of assessable real property, except that interest accruing shall not begin to run until the notice provided in this subdivision has been properly given and 30 days thereafter have elapsed. The governing body of any such political subdivision shall provide for the payment of these amounts and shall take appropriate action to that end. If the assessment is not paid in a single installment, the auditor shall annually mail to each connected city, to the owner of any right-of-way and, as long as the property is publicly owned, to the owner of any public property a notice stating that an installment is due and should be paid to the water or sewer district's special fund. The auditor may collect the amount due on account of the right-of-way of any railroad or privately owned public utility by distress and sale of personal property in the manner provided by law in case of taxes levied upon personal property or by suit brought to enforce the collection of this indebtedness unless a different method of collecting such amounts is provided for by any contract between the owner of any right-of-way and the board or court. Any amount payable by any city connected to the system, if not paid when due, may be extended by the auditor as a tax upon all taxable property within the city for collection with other taxes in the following year.

History: *1971 c 916 s 17, Ex1971 c 20 s 9, 1973 c 123 art 5 s 7, 1973 c 322 s 12-14; 1986 c 444, 1Sp1986 c 3 art 1 s 82*

116A.18 SUPPLEMENTAL ASSESSMENTS; REASSESSMENT.

Subdivision 1. **Supplemental assessments.** The county board or court may make supplemental assessments to correct omissions, errors, or mistakes in the assessment relating to the total cost of the improvement or any other particular, or whenever it is ascertained that the collections of special assessments and interest thereon, together with the net revenues of the system, are not sufficient to pay all bonds issued to finance the system and interest thereon when due. A supplemental assessment shall be preceded by personal or mailed notice to the owner of each parcel included in the supplemental assessment and a hearing as provided for the original assessment.

Subd. 2. **Reassessment.** When an assessment is, for any reason, set aside by a court of competent jurisdiction as to any parcel or parcels of land, or in event the board or court finds that the assessment or any part thereof is excessive, or determines on advice of the county attorney that the assessment or proposed assessment or any part thereof is or may be invalid for any reason, the board or court may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to such parcel or parcels.

Subd. 3. **Reapportionment upon land division.** When a tract of land against which a special assessment has been levied is thereafter divided or subdivided by plat or otherwise, the board or court may, on application of the owner of any part of the tract or on its own motion equitably apportion among the various lots or parcels in the tract all the installments of the assessment against the tract remaining unpaid and not then due if it determines that such apportionment will not materially impair collection of the unpaid balance of the original assessment against the tract. The board or court may, and if the special assessment has been pledged to the payment of improvement warrants shall, require the owner or owners, as a condition of such apportionment, to furnish a satisfactory surety bond fully protecting the county against any loss resulting from failure to pay any part of the reapportionment assessment when due. Notice of such apportionment and of the right to appeal shall be mailed to or personally served upon all owners of any part of the tract. Within 30 days after the mailing or service of the notice of such apportionment any such owner may appeal as provided in section 116A.19.

History: *1971 c 916 s 18, Ex1971 c 20 s 10, 1973 c 322 s 15*

116A.19 APPEALS.

Subdivision 1. **Procedure.** Any party aggrieved may appeal to the district court from an order of the board or court made in any proceeding.

(a) To render the appeal effectual, the appellant shall file with the auditor or court administrator within 30 days after the filing of such final order a notice of appeal which shall state the particular damages appealed from and the ground upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the county where the property is located of not less than $250 with sufficient surety to be approved by the auditor or court administrator, conditioned that the appellant will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against the appellant and abide the order of the court. Within 30 days after such filing, the auditor, in case of a county water or sewer improvement proceeding, shall return and file with the court administrator of the district court the original notice and appeal bond.

(b) The issues raised by the appeal shall stand for trial by jury and shall be tried and determined at the next term of the district court held within the county in which the proceedings were commenced, or in such other county in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence of all other matters of a civil nature in court. If there be more than one appeal triable in one county, the court may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. If the appellant fails to prevail, the cost of the trial shall be paid by the appellant. In case of appeal as to damages to property situated in the county other than the county where the sewer or water proceedings are pending, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the court administrator of the district court where the appeal is filed, shall make, certify and file in the office of the court administrator of the district court of the county where the trial is to be had, a transcript of the papers and documents on file in the court administrator's office in the proceedings so far as they pertain to the matters on account of which the appeal is taken. After the final determination of such appeal, the court administrator of the district court where the action is tried, shall certify and return the verdict to the district court of the county where the proceedings were instituted.

(c) The court administrator of the district court shall file a certified copy of the final determination of any such appeal with the auditor of the county affected.

Subd. 2. **Effect of determination.** In all cases of appeal from an order determining damages to property from the construction of any system, improvement, or extension, the amount awarded by the jury as finally determined shall stand for and in the place of the amount from which the appeal was taken. In all cases of appeal from an order confirming special assessments, the court shall either affirm the assessment or set it aside and order a reassessment as provided in section 116A.18, subdivision 2. The

court may order reassessment of one or more or all of the properties appearing on any special assessment roll. Upon reassessment of any property, the board or court shall have jurisdiction to reassess such other properties as it may deem necessary to spread the cost equitably, provided that notice is given to the owners of all properties reassessed. In any case of appeal from a special assessment, no reassessment shall be ordered unless the original assessment is determined to be arbitrary, unreasonable, or based on a mistake of law.

Subd. 3. **Appeal from orders.** Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any water or sewer system or establishing or refusing to establish any water or sewer system or the assessment of benefits. The appellant shall serve notice of appeal and give bond as provided in subdivision 1. Upon appeal being perfected, it may be brought on for trial by either party upon ten days notice to the other, and shall then be tried by the court without a jury. The court shall examine the whole matter and receive evidence to determine whether the findings made by the county board can be sustained. At the trial the findings made by the county board shall be prima facie evidence of the matters therein stated and the order of the county board shall be deemed prima facie reasonable. If the court shall find that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is arbitrary, unlawful, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it or remand such matter to the county board for further proceeding before the board. After determination of the appeal, the county board shall proceed in conformity therewith.

Subd. 4. **Appeal.** Any party aggrieved by a final order or judgment rendered on appeal to the district court, or by the order made in any judicial improvement proceeding dismissing the petition or establishing or refusing to establish any judicial improvement or assessing benefits, may appeal as in other civil cases.

Subd. 5. **Additional surety bonds.** Whenever any appeal from an order of the board or court is taken under section 116A.19, any involved county or, if two or more counties are involved and a commission is formed under section 116A.24, the commission, may move the court having jurisdiction over the appeal for an order requiring the appellant, or appellants, to file a surety bond as hereinafter set forth. Three days written notice of the motion shall be given. If the court determines that loss or damage to the public or taxpayers may result from the pendency of the appeal, the court may require the appellant, or appellants, to file a surety bond, which shall be approved by the court, in such amount as the court may determine. The bond shall be conditioned for payment to the county, or commission, of any loss or damage which may be caused to the county, the commission or the taxpayers by the pendency of the appeal, to the extent of the penal sum of such bond, if the appellant, or appellants, shall not prevail therein. If the surety bond is not filed within a reasonable time allowed therefor by the court, the appeal shall be dismissed with prejudice. If such appellant, or appellants, file a bond as herein required and prevail in the appeal, any premium paid on the bond shall be repaid by or taxed against the county or commission.

History: *1971 c 916 s 19; 1973 c 322 s 16; 1975 c 294 s 7; 1983 c 247 s 53; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

116A.20 BOND ISSUES.

Subdivision 1. The county board of each county is authorized, at any time after the establishment of any system, or the formation of any district under section 116A.02, subdivision 4, to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing a system. The board may in like manner issue bonds to pay the cost of improvement or extension of any system, when ordered in accordance with section 116A.12. It may also issue bonds to refund outstanding bonds issued pursuant to this section, in accordance with chapter 475.

Subd. 2. Such bonds shall be sold and issued in accordance with chapter 475, as amended, and shall pledge the full faith, credit, and resources of the county for the prompt payment of principal and interest. An election shall be required to authorize bonds to be issued under this section, unless the board or court having jurisdiction of the system has determined that special assessments and revenues are sufficient for their payment, by order entered pursuant to section 116A.12, subdivision 8. The bonds shall be further secured by pledge of the net revenues from the systems financed by the bonds to the debt redemption fund, and a covenant that rates and charges shall be established for the service of such system, sufficient to pay all costs of operation and maintenance thereof and to produce net revenues adequate, with special assessments received in the fund, to pay all of the bonds and interest thereon when due.

Subd. 3. The bonds shall be payable at such time or times, not to exceed 30 years from their date, and bear such rate or rates of interest not exceeding eight percent per annum, payable annually or semiannually as the county board shall by resolution determine. The years and amounts of principal maturities shall be such as in the opinion of the county board are warranted by the anticipated collections of the water and sewer improvement assessments without regard to any limitations on such maturities imposed by section 475.54.

Subd. 4. Each bond shall contain a recital that it is issued by authority of and in strict accordance with sections 116A.01 to 116A.26. The recital shall be conclusive in favor of the holders of the bonds, that the water or sewer improvement has been properly established, that property within the county is subject to assessment for benefits in amount not less than the amount of the bonds, and that all proceedings relative to the construction of the system or systems financed by the bonds have been or will be taken according to law.

Subd. 5. The board shall pay the principal of and interest on bonds issued under the provisions of this section out of any available funds in the county treasury when the moneys on hand in the fund from which they are primarily payable are insufficient therefor; but the funds from which said moneys have been taken shall be replenished with interest for the time actually needed at the rate of eight percent per annum from the assessments levied for the water or sewer or combined system or from the net revenues of the system or from the taxes, if any, levied for the payment of principal and interest on the bonds.

Subd. 6. Notwithstanding anything in sections 116A.01 to 116A.26 to the contrary, the county board of each county is authorized, at any time after the conditions in subdivision 1 exist, to issue for any of the purposes set forth in subdivision 1, general obligation temporary bonds in anticipation of and in an amount not to exceed any grant or loan of state or federal funds. Such bonds shall mature within not more than three years from the date of issuance and shall otherwise be sold and issued in accordance with chapter 475, and shall pledge the full faith, credit, and resources of the county for the prompt payment of the principal and interest thereof, except that no election shall be required and the debt limitations of chapter 475 shall not apply to such bonds. Prior to the issuance of such bonds the board shall secure a commitment for the grant or loan in anticipation of which the bonds are to be issued, and if any of the bonds are to be issued in anticipation of a loan, the board shall also determine that all conditions exist precedent to the authorization of definitive bonds in an amount equal at least to the principal sum of the loan. In the event such temporary bonds are issued, the proceeds of the grant or loan when received shall be irrevocably appropriated to the sinking fund for the temporary bonds, and the estimated amount thereof may be deducted from the tax which would otherwise be required by section 475.61, subdivision 1, to be levied. The provisions of subdivision 4 shall apply to such bonds. Any amount of the temporary bonds which cannot be paid at maturity from the proceeds of the grant or loan or from any other funds appropriated by the board for the purpose, shall be paid from the proceeds of definitive obligations to be issued and sold before the maturity date in accordance with subdivisions 2, 3 and 4, except that no election shall be required, or, if sufficient funds are not available for payment in full of the temporary

obligations at maturity, the holders thereof shall have the right to require the issuance in exchange therefor of such definitive obligations bearing interest at the maximum rate permitted by law.

History: *1971 c 916 s 20; 1973 c 322 s 17-19; 1975 c 294 s 8-11; 1976 c 239 s 23; 1977 c 347 s 17; 1977 c 442 s 11*

116A.21 EMERGENCY CERTIFICATES OF INDEBTEDNESS.

If in any budget year the receipts of revenues of the system should from some unforeseen cause become insufficient to pay current expenses of the operation, maintenance, or debt service of the system, or if any calamity or other public emergency should cause the necessity of making extraordinary expenditures, the board may make an emergency appropriation of an amount sufficient to meet the deficiency and may authorize the issuance, negotiation, and sale of certificates of indebtedness in this amount. The board shall forthwith levy on all taxable property subject to special assessment for the system a tax sufficient to pay the certificates and interest thereon, and shall appropriate all collections of such tax to a special fund created for that purpose. The certificates may mature not later than April in the year following the year in which the tax is collectible. Emergency certificates of indebtedness shall be a general obligation of the county, and may be refunded by the issuance of bonds pursuant to section 116A.20, if the board determines that payment thereof in one year would place an undue burden upon property assessable for the system and that net revenues of the system will be sufficient to pay the refunding bonds as well as outstanding bonds and interest thereon when due.

History: *1971 c 916 s 21; 1973 c 322 s 20*

116A.22 SERVICE CHARGES; A SPECIAL ASSESSMENT AGAINST BENEFITED PROPERTY.

Charges established for connections to and the use and availability of service from any water or sewer or combined system, if not paid when due, shall, together with any penalties established for nonpayment, become a lien upon the property connected or for which service was made available. On or before July 1 in each year written notice shall be mailed to the owner of any property as to which such charges are then due and unpaid, stating the amount of the charges and any penalty thereon and that unless paid by October 1 thereafter, or unless a hearing is desired on the question whether such amount and penalty is properly due and payable, the same will be certified, extended, and assessed as a tax or special assessment upon the property for collection with and as a part of other taxes in the following year. Any property owner requesting notice shall be notified of the time and place of such hearing, and the county board, or the commission appointed pursuant to section 116A.24 shall then hear all matters presented by the owner and determine the amount and penalty, if any, which is properly due and payable, and shall cause the same to be certified, extended, and assessed as stated in the notice. The county board or the commission may also provide by resolution for discontinuance of water services to any premises in the event of nonpayment of charges for any water or sewer service provided to the premises, upon reasonable notice to the owner and opportunity for hearing upon any claim that the charges are not properly due and payable.

History: *1971 c 916 s 22; Ex1971 c 48 s 45; 1973 c 322 s 21; 1986 c 444*

116A.23 AUTHORITY TO ACCEPT GIFTS AND GRANTS.

The county boards may accept gifts, may apply for and accept grants or loans of money or other property from the United States, the state, or any person for purposes of constructing, operating and maintaining a water or sewer or combined system, may enter into any agreement required in connection therewith, and may hold, use, and dispose of such money or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.

History: *1971 c 916 s 23*

116A.24 APPOINTMENT AND POWERS OF WATER AND SEWER COMMISSION.

Subdivision 1. Any time after the establishment of a water or sewer or combined water or sewer system, or the formation of a district under section 116A.02, subdivision 4, the board or boards or, when a multicounty system is established under section 116A.12, the court may provide for the appointment of a water or sewer or water and sewer commission. Such a commission shall be appointed before the final award of a contract for the construction of any system ordered by the district court. The commission shall have not less than five members and not more than 11. Members shall be appointed at large by the county board or boards from within the areas in their respective counties which are served by the system or from within a district formed under section 116A.02, subdivision 4, which district includes the served areas. Commission members shall serve for terms of four years and until their successors are appointed and qualify. The commencement date of the term of each member and the member's successors shall be fixed by order of the board or boards or court so that as nearly as possible an equal number of members will be replaced or reappointed each year. When multicounty systems are involved, commission membership shall be apportioned by the boards or court among the counties on the basis of their population served by the system or, if a district has been formed, on the basis of population located within that portion of each county situated within the district. When the area served by any system is enlarged and the commission members are not appointed from within a district formed under section 116A.02, subdivision 4, which includes the enlarged system, the board or boards or court shall reapportion or increase the membership and reestablish the terms so as to conform to the foregoing provisions, but each member shall continue to serve for the term appointed. Vacancies due to death, incapacity to serve, removal, or resignation shall be filled by the appointing boards for the unexpired terms.

Subd. 2. Subject to the approval of the board or boards except to the extent that approval is waived by the board or boards in an order filed with and confirmed by order of the district court, the water or sewer or water and sewer commission or when a multicounty system is involved a county board may do all things necessary to establish, construct, operate and maintain a system including but not limited to the following:

(a) Employ on such terms as it deems advisable, persons or firms performing engineering, legal or other services of a professional nature; require any employee to obtain and file with it an individual bond or fidelity insurance policy; and procure insurance in such amounts as it deems necessary against liability of the board or its officers and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its facilities, equipment, or other property as it deems necessary.

(b) Construct or maintain its systems or facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights-of-way without first obtaining a franchise from any local government unit having jurisdiction over them; but such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of any such government unit relating to construction, installation, and maintenance of similar facilities in such public properties and shall not obstruct the public use of such rights-of-way.

(c) Enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

(d) Have the power to adopt rules and regulations relating to the establishment of water or sewer rentals or user fees as may be deemed advisable and the operation of any system operated by it, and may provide penalties for the violation thereof not exceeding the maximum which may be specified for a misdemeanor. Any rule or regulation prescribing a penalty for violation shall be published at least once in a newspaper having general circulation in the area.

(e) Act under the provisions of section 471.59, or any other appropriate law providing for joint or cooperative action between government units.

(f) Acquire by purchase, lease, condemnation, gift, or grant, any real or personal property including positive and negative easements and water and air rights, and it may construct, enlarge, improve, replace, repair, maintain, and operate any system determined to be necessary or convenient for the collection and disposal of sewage or collection, treatment, and distribution of water in its jurisdiction. Any local government unit and the commissioners of transportation and natural resources are authorized to convey to or permit the use of any such facilities owned or controlled by it by the board or commission, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation, without an election or approval by any other government agency. The board or commission may hold such property for its purposes, and may lease any such property so far as not needed for its purposes, upon such terms and in such manner as it shall deem advisable. Unless otherwise provided, the right to acquire lands and property rights by condemnation shall be exercised in accordance with sections 117.011 to 117.232, and shall apply to any property or interest therein owned by any local government unit; provided, that no such property devoted to an actual public use at the time, or held to be devoted to such use within a reasonable time, shall be so acquired unless a court of competent jurisdiction shall determine that the use proposed by the commission is paramount to such use. Except in case of property in actual public use, the board or commission may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation.

(g) Contract with the United States or any agency thereof, any state or agency thereof, or any local government unit or governmental agency or subdivision, for the joint use of any facility owned by the board or such entity, for the operation by such entity of any system or facility of the board, or for the performance on the board's behalf of any service, on such terms as may be agreed upon by the contracting parties.

(h) Exercise any other powers granted to the board or boards or court under section 116A.01, subdivision 2, relating to the establishment of a water or sewer or water and sewer system, except for the power to issue bonds.

(i) Retain the services of a certified public accountant for the purposes of providing an annual audited operating statement and balance sheet and other financial reports. The reports must be prepared in accordance with general accounting principles and must be filed within six months after the close of the fiscal year in the office of each county auditor within the district and with the office of the state auditor. The reports may be prepared by the state auditor instead of by a certified public accountant if the commission so requests.

Subd. 3. The payment of the cost of construction of a multicounty system established by order pursuant to section 116A.12, and of the subsequent improvement or extension of the system when ordered by the court, is the obligation of each of the counties containing property assessable for the system, in proportion to the area of such property situated within the county, or in any other proportion which the counties, by concurring resolutions, confirmed by order of the court, may determine is just and reasonable. When bonds are sold and issued by the counties to pay such cost pursuant to section 116A.20, the proceeds of the bonds, except such portion as the county shall retain to pay interest until the system is self-supporting, shall be remitted to the commission, and the commission shall receive and disburse all revenues of the system, and shall act as agent of the counties in supervising the construction, improvement, and extension thereof, and thereafter in operating and maintaining the system. All collections of special assessments and any debt service ad valorem taxes levied for the system on property within each county shall be deposited as received in the sinking fund for bonds issued by that county to finance the system or extensions or improvements thereof, or in a single joint account administered by the commission on behalf of the counties for payment into the respective sinking fund accounts of the counties at such times and in such amounts as the county boards mutually determine is just and reasonable. The commission shall remit to the counties the net revenues from time to time received in excess of the amounts needed to pay current operation and maintenance expenses of the system and to maintain a reasonable operating reserve. The net revenues remitted each year shall be apportioned among the counties in proportion to the principal amount of bonds of each county then outstanding, which were issued for the establishment, improvement, or extension of the system or any other proportion which the counties mutually determine is just and reasonable, provided that with the consent of the county boards, the commission may retain any portion of the net revenues not needed for the payment of their bonds in a special fund to be expended for the improvement or extension of the system.

All accounts authorized by this subdivision may be established within a single fund administered by the commission on behalf of the counties and held in a single bank mutually designated by the county boards to serve as a depository for all sums, including bond proceeds, special assessments, tax levies and revenues received on account of the system.

Subd. 4. [Repealed, 1977 c 442 s 16]

History: *1971 c 916 s 24; 1973 c 35 s 32; 1973 c 322 s 22-24; 1975 c 294 s 12-14; 1976 c 166 s 7; 1976 c 239 s 24; 1977 c 442 s 12-14; 1983 c 265 s 1; 1986 c 444*

116A.25 PROPERTY EXEMPT FROM TAXATION.

Any properties, real or personal, owned, leased, controlled, used, or occupied by a water or sewer or water and sewer commission or board for any purpose referred to in sections 116A.01 to 116A.26 are declared to be acquired, owned, leased, controlled, used and occupied for public, governmental, and municipal purposes, and shall be exempt from taxation by the state or any political subdivision of the state, provided that such properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from such improvement. No possible use of any such properties in any manner different from their use as part of a distribution or disposal system at the time shall be considered in determining the special benefit received by such properties. All such assessments shall be subject to final confirmation by the county board or boards in whose jurisdiction the system is constructed and whose determination of the benefits shall be conclusive upon the political subdivision levying the assessment.

History: *1971 c 916 s 25; 1983 c 213 s 4*

116A.26 POLLUTION CONTROL AGENCY.

No action taken under sections 116A.01 to 116A.26 shall be inconsistent with chapter 115 or 116, or lawful standards, rules, orders or permits promulgated or issued thereunder.

History: *1971 c 916 s 27; 1985 c 248 s 70*

MINNESOTA STATUTES

CHAPTER 144, STATE COMMISSIONER OF HEALTH

STATE COMMISSIONER OF HEALTH

144.01 [Repealed, 1977 c 305 s 46]

144.011 DEPARTMENT OF HEALTH.

Subdivision 1. **Commissioner.** The department of health shall be under the control and supervision of the commissioner of health who shall be appointed by the governor under the provisions of section 15.06. The state board of health is abolished and all powers and duties of the board are transferred to the commissioner of health. The commissioner shall be selected without regard to political affiliation but with regard to ability and experience in matters of public health.

Subd. 2. **State health advisory task force.** The commissioner of health may appoint a state health advisory task force. If appointed, members of the task force shall be broadly representative of the licensed health professions and shall also include public members as defined by section 214.02. The task force shall expire, and the terms, compensation, and removal of members shall be as provided in section 15.059.

History: *1977 c 305 s 39; 1983 c 260 s 30*

144.02 [Repealed, 1977 c 305 s 46]
144.03 [Repealed, 1977 c 305 s 46]
144.04 [Repealed, 1977 c 305 s 46]

144.05 GENERAL DUTIES OF COMMISSIONER; REPORTS.

The state commissioner of health shall have general authority as the state's official

health agency and shall be responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens. This authority shall include but not be limited to the following:

(a) Conduct studies and investigations, collect and analyze health and vital data, and identify and describe health problems;

(b) Plan, facilitate, coordinate, provide, and support the organization of services for the prevention and control of illness and disease and the limitation of disabilities resulting therefrom;

(c) Establish and enforce health standards for the protection and the promotion of the public's health such as quality of health services, reporting of disease, regulation of health facilities, environmental health hazards and personnel;

(d) Affect the quality of public health and general health care services by providing consultation and technical training for health professionals and paraprofessionals;

(e) Promote personal health by conducting general health education programs and disseminating health information;

(f) Coordinate and integrate local, state and federal programs and services affecting the public's health;

(g) Continually assess and evaluate the effectiveness and efficiency of health service systems and public health programming efforts in the state; and

(h) Advise the governor and legislature on matters relating to the public's health.

History: *(5339) RL s 2130; 1973 c 356 s 2; 1977 c 305 s 45; 1986 c 444*

144.051 DATA RELATING TO LICENSED AND REGISTERED PERSONS.

Subdivision 1. **Purpose.** The legislature finds that accurate information pertaining to the numbers, distribution and characteristics of health-related personnel is required in order that there exist an adequate information resource at the state level for purposes of making decisions pertaining to health personnel.

Subd. 2. **Information system.** The commissioner of health shall establish a system for the collection, analysis and reporting of data on individuals licensed or registered by the commissioner or the health-related licensing boards as defined in section 214.01, subdivision 2. Individuals licensed or registered by the commissioner or the health-related licensing boards shall provide information to the commissioner of health that the commissioner may, pursuant to section 144.052, require. The commissioner shall publish at least biennially, a report which indicates the type of information available and methods for requesting the information.

History: *1978 c 759 s 1; 1986 c 444*

144.052 USE OF DATA.

Subdivision 1. **Rules.** The commissioner, after consultation with the health-related licensing boards as defined in section 214.01, subdivision 2, shall promulgate rules in accordance with chapter 14 regarding the types of information collected and the forms used for collection. The types of information collected shall include licensure or registration status, name, address, birth date, sex, professional activity status, and educational background or similar information needed in order to make decisions pertaining to health personnel.

Subd. 2. **Coordination with licensure renewal.** In order that the collection of the information specified in this section not impose an unnecessary burden on the licensed or registered individual or require additional administrative cost to the state, the commissioner of health shall, whenever possible, collect the information at the time of the individual's licensure or registration renewal. The health-related licensing boards shall include the request for the information that the commissioner may require pursuant to subdivision 1 with the licensure renewal application materials, provided, however, that the collection of health personnel data by the commissioner shall not

cause the licensing boards to incur additional costs or delays with regard to the license renewal process.

History: *1978 c 759 s 2; 1982 c 424 s 130; 1986 c 444*

144.053 RESEARCH STUDIES CONFIDENTIAL.

Subdivision 1. All information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the state commissioner of health, in connection with studies conducted by the state commissioner of health, or carried on by the said commissioner jointly with other persons, agencies or organizations, or procured by such other persons, agencies or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition of health shall be confidential and shall be used solely for the purposes of medical or scientific research.

Subd. 2. Such information, records, reports, statements, notes, memoranda, or other data shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any representative of the state commissioner of health, nor by any other person, except as may be necessary for the purpose of furthering the research project to which they relate. No person participating in such research project shall disclose, in any manner, the information so obtained except in strict conformity with such research project. No employee of said commissioner shall interview any patient named in any such report, nor a relative of any such patient, unless the consent of the attending physician and surgeon is first obtained.

Subd. 3. The furnishing of such information to the state commissioner of health or an authorized representative, or to any other cooperating agency in such research project, shall not subject any person, hospital, sanitarium, nursing home or other person or agency furnishing such information, to any action for damages or other relief.

Subd. 4. Any disclosure other than is provided for in this section, is hereby declared to be a misdemeanor and punishable as such.

History: *1955 c 769 s 1-4; 1976 c 173 s 31; 1977 c 305 s 45; 1986 c 444*

144.055 HOME SAFETY PROGRAMS.

Subdivision 1. The state commissioner of health is authorized to develop and conduct by exhibit, demonstration and by health education or public health engineering activity, or by any other means or methods which the commissioner may determine to be suitable and practicable for the purpose, a program in home safety designed to prevent accidents and fatalities resulting therefrom. The commissioner shall cooperate with local and county boards of health, the Minnesota safety council, and other interested voluntary groups in its conduct of such programs.

Subd. 2. For the purpose of assisting local and county boards of health to develop community home safety programs and to conduct such surveys of safety hazards in municipalities and counties, the commissioner may loan or furnish exhibit, demonstration, and educational materials, and may assign personnel for a limited period to such local and county boards of health.

History: *1957 c 290 s 1; 1977 c 305 s 45*

144.06 STATE COMMISSIONER OF HEALTH TO PROVIDE INSTRUCTION.

The state commissioner of health, hereinafter referred to as the commissioner, is hereby authorized to provide instruction and advice to expectant mothers and fathers during pregnancy and to mothers, fathers, and their infants after childbirth; and to employ such persons as may be necessary to carry out the requirements of sections 144.06 and 144.07. The instruction, advice, and care shall be given only to applicants residing within the state. No person receiving aid under this section and sections 144.07 and 144.09 shall for this reason be affected thereby in any civil or political rights, nor shall the person's identity be disclosed except upon written order of the commissioner.

History: *(5340, 5341, 5342) 1921 c 392 s 1-3; 1977 c 305 s 45; 1981 c 31 s 2*

144.065 VENEREAL DISEASE TREATMENT CENTERS.

The state commissioner of health shall assist local health agencies and organizations throughout the state with the development and maintenance of services for the detection and treatment of venereal diseases. These services shall provide for diagnosis, treatment, case finding, investigation, and the dissemination of appropriate educational information. The state commissioner of health shall promulgate rules relative to the composition of such services and shall establish a method of providing funds to local health agencies and organizations which offer such services. The state commissioner of health shall provide technical assistance to such agencies and organizations in accordance with the needs of the local area.

History: *1974 c 575 s 6; 1977 c 305 s 45; 1985 c 248 s 70*

144.07 POWERS OF COMMISSIONER.

The commissioner may:

(1) make all reasonable rules necessary to carry into effect the provisions of this section and sections 144.06 and 144.09, and may amend, alter, or repeal such rules;

(2) accept private gifts for the purpose of carrying out the provisions of those sections;

(3) cooperate with agencies, whether city, state, federal, or private, which carry on work for maternal and infant hygiene;

(4) make investigations and recommendations for the purpose of improving maternity care;

(5) promote programs and services available in Minnesota for parents and families of victims of sudden infant death syndrome; and

(6) collect and report to the legislature the most current information regarding the frequency and causes of sudden infant death syndrome.

The commissioner shall include in the report to the legislature a statement of the operation of those sections.

History: *(5343) 1921 c 392 s 4; 1977 c 305 s 45; 1984 c 637 s 1; 1985 c 248 s 70; 1986 c 444*

144.071 MERIT SYSTEM FOR LOCAL EMPLOYEES.

The commissioner may establish a merit system for employees of county or municipal health departments or public health nursing services or health districts, and may promulgate rules governing the administration and operation thereof. In the establishment and administration of the merit system authorized by this section, the commissioner may utilize facilities and personnel of any state department or agency with the consent of such department or agency. The commissioner may also, by rule, cooperate with the federal government in any manner necessary to qualify for federal aid.

History: *1969 c 1073 s 1; 1977 c 305 s 45; 1985 c 248 s 70*

144.072 IMPLEMENTATION OF SOCIAL SECURITY AMENDMENTS OF 1972.

Subdivision 1. **Rules.** The state commissioner of health shall implement by rule, pursuant to the administrative procedure act, those provisions of the social security amendments of 1972 (Public Law Number 92-603) required of state health agencies, including rules which:

(a) establish a plan, consistent with regulations prescribed by the secretary of health, education, and welfare, for the review by appropriate professional health personnel, of the appropriateness and quality of care and services furnished to recipients of medical assistance, and

(b) provide for the determination as to whether institutions and agencies meet the requirements for participation in the medical assistance program, and the certification that those requirements, including utilization review, are being met.

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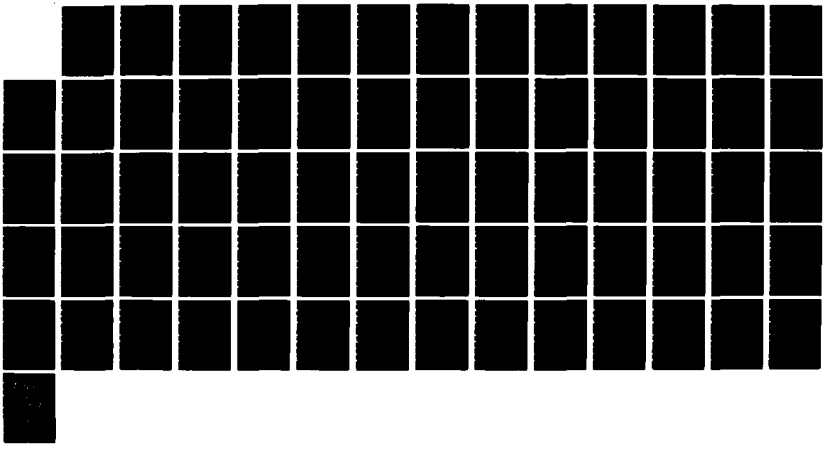

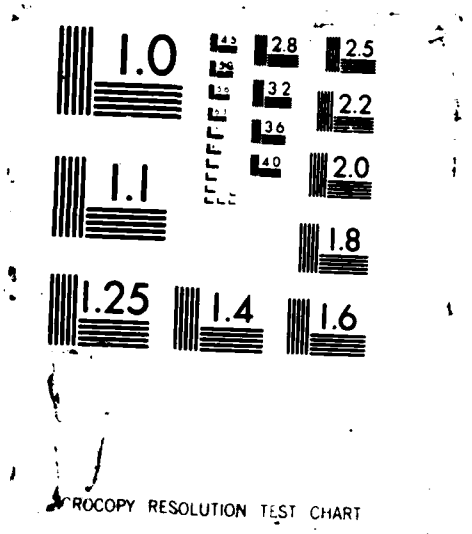
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Subd. 2. **Existing procedures.** The policies and procedures, including survey forms, reporting forms, and other documents developed by the commissioner of health for the purpose of conducting the inspections of care required under Code of Federal Regulations, title 42, sections 456.600 to 456.614, in effect on March 1, 1984, have the force and effect of law and shall remain in effect and govern inspections of care until June 30, 1987, unless otherwise superseded by rules adopted by the commissioner of health.

History: *1973 c 717 s 1; 1977 c 305 s 45; 1984 c 641 s 10, 1986 c 316 s 1*

144.0721 ASSESSMENTS OF CARE AND SERVICES TO NURSING HOME RESIDENTS.

Subdivision 1. The commissioner of health shall assess the appropriateness and quality of care and services furnished to private paying residents in nursing homes and boarding care homes that are certified for participation in the medical assistance program under United States Code, title 42, sections 1396-1396p. These assessments shall be conducted in accordance with section 144.072, with the exception of provisions requiring recommendations for changes in the level of care provided to the private paying residents.

Subd. 2. **Access to data.** With the exception of summary data, data on individuals that is collected, maintained, used, or disseminated by the commissioner of health under subdivision 1 is private data on individuals and shall not be disclosed to others except:

(1) under section 13.05;

(2) under a valid court order;

(3) to the nursing home or boarding care home in which the individual resided at the time the assessment was completed; or

(4) to the commissioner of human services.

History: *1984 c 641 s 11; 1984 c 654 art 5 s 58*

144.0722 RESIDENT REIMBURSEMENT CLASSIFICATIONS; PROCEDURES FOR RECONSIDERATION.

Subdivision 1. **Resident reimbursement classifications.** The commissioner of health shall establish resident reimbursement classifications based upon the assessments of residents of nursing homes and boarding care homes conducted under sections 144.072 and 144.0721, or under rules established by the commissioner of human services under sections 256B.41 to 256B.48. The reimbursement classifications established by the commissioner must conform to the rules established by the commissioner of human services.

Subd. 2. **Notice of resident reimbursement classification.** The commissioner of health shall notify each resident, and the nursing home or boarding care home in which the resident resides, of the reimbursement classification established under subdivision 1. The notice must inform the resident of the classification that was assigned, the opportunity to review the documentation supporting the classification, the opportunity to obtain clarification from the commissioner, and the opportunity to request a reconsideration of the classification. The notice of resident classification must be sent by first-class mail. The individual resident notices may be sent to the resident's nursing home or boarding care home for distribution to the resident.

Subd. 3 **Request for reconsideration.** The resident or the nursing home or boarding care home may request that the commissioner reconsider the assigned reimbursement classification. The request for reconsideration must be submitted in writing to the commissioner within ten working days of the receipt of the notice of resident classification. The request for reconsideration must include the name of the resident, the name and address of the facility in which the resident resides, the reasons for the reconsideration, the requested classification changes, and documentation supporting the requested classification. The documentation accompanying the reconsideration request is limited to documentation establishing that the needs of the resident at the time of the assessment resulting in the disputed classification justify a change of classification.

Subd. 4. **Reconsideration.** The commissioner's reconsideration must be made by individuals not involved in reviewing the assessment that established the disputed classification. The reconsideration must be based upon the initial assessment and upon the information provided to the commissioner under subdivision 3. If necessary for evaluating the reconsideration request, the commissioner may conduct on-site reviews. In its discretion, the commissioner may review the reimbursement classifications assigned to all residents in the facility. Within 15 working days of receiving the request for reconsideration, the commissioner shall affirm or modify the original resident classification. The original classification must be modified if the commissioner determines that the assessment resulting in the classification did not accurately reflect the needs of the resident at the time of the assessment. The resident and the nursing home or boarding care home shall be notified within five working days after the decision is made. The commissioner's decision under this subdivision is the final administrative decision of the agency.

History: *1Sp1985 c 3 s 1*

144.073 USE OF DUPLICATING EQUIPMENT.

The state commissioner of health is authorized to maintain and operate mimeograph or similar type of stencil duplicating equipment in the Minneapolis office to expedite the issuance of communicable disease bulletins and public health information circulars to health officers and other public health workers.

History: *1957 c 274 s 1; 1977 c 305 s 45*

144.074 FUNDS RECEIVED FROM OTHER SOURCES.

The state commissioner of health may receive and accept money, property, or services from any person, agency, or other source for any public health purpose within the scope of statutory authority. All money so received is annually appropriated for those purposes in the manner and subject to the provisions of law applicable to appropriations of state funds.

History: *1975 c 310 s 9; 1977 c 305 s 45; 1986 c 444*

144.0741 MS1980 [Expired]

144.0742 CONTRACTS FOR PROVISION OF PUBLIC HEALTH SERVICES.

The commissioner of health is authorized to enter into contractual agreements with any public or private entity for the provision of statutorily prescribed public health services by the department. The contracts shall specify the services to be provided and the amount and method of reimbursement therefor. Funds generated in a contractual agreement made pursuant to this section are appropriated to the department for purposes of providing the services specified in the contracts. All such contractual agreements shall be processed in accordance with the provisions of chapter 16B.

History: *1981 c 360 art 1 s 15; 1984 c 544 s 89*

144.075 [Repealed, 1984 c 503 s 6]

144.076 MOBILE HEALTH CLINIC.

The state commissioner of health may establish, equip, and staff with the commissioner's own members or volunteers from the healing arts, or may contract with a public or private nonprofit agency or organization to establish, equip, and staff a mobile unit, or units to travel in and around poverty stricken areas and Indian reservations of the state on a prescribed course and schedule for diagnostic and general health counseling, including counseling on and distribution of dietary information, to persons residing in

such areas. For this purpose the state commissioner of health may purchase and equip suitable motor vehicles, and furnish a driver and such other personnel as the department deems necessary to effectively carry out the purposes for which these mobile units were established or may contract with a public or private nonprofit agency or organization to provide the service.

History: *1971 c 940 s 1; 1975 c 310 s 3; 1977 c 305 s 45; 1986 c 444*

144.08 POWERS AND DUTIES OF HOTEL INSPECTORS AND AGENTS; INSPECTIONS AND REPORTS.

The department of health shall have and exercise all of the authority and perform all the duties imposed upon and vested in the state hotel inspector. With the advice and consent of the department of administration, the department of health shall appoint and fix the compensation of a hotel inspector and such other inspectors and agents as may be required for the efficient conduct of the duties hereby imposed. These inspectors, by order of the department of administration, may be required to inspect any or all food products subject to inspection by the department of agriculture and to investigate and report to such department violations of the pure food laws and the rules of the department of agriculture pertaining thereto. The reports of these inspectors to the department of agriculture shall have the force and effect of reports made or required to be made by the inspectors of such department.

History: *(53-34) 1925 c 426 art 9 s 2; 1961 c 113 s 1; 1985 c 248 s 70*

144.09 COOPERATION WITH FEDERAL AUTHORITIES.

The state of Minnesota, through its legislative authority:

(1) Accepts the provisions of any act of congress providing for cooperation between the government of the United States and the several states in public protection of maternity and infancy;

(2) Empowers and directs the commissioner to cooperate with the federal children's bureau to carry out the purposes of such acts; and

(3) Appoints the state treasurer as custodian of all moneys given to the state by the United States under the authority of such acts and such money shall be paid out in the manner provided by such acts for the purposes therein specified.

History: *(5344) 1921 c 392 s 5; 1977 c 305 s 45*

144.092 COORDINATED NUTRITION DATA COLLECTION.

The commissioner of health shall develop and coordinate a reporting system to improve the state's ability to document inadequate nutrient and food intake of Minnesota's children and adults and to identify problems and determine the most appropriate strategies for improving inadequate nutritional status. The board on aging shall develop a method to evaluate the nutritional status and requirements of the elderly in Minnesota. The commissioner of health and the board on aging shall report to the legislature on each July 1, beginning in 1988, on the results of their investigation and their recommendations on the nutritional needs of Minnesotans.

History: *1986 c 404 s 6*

144.10 FEDERAL AID FOR MATERNAL AND CHILD WELFARE SERVICES; CUSTODIAN OF FUND; PLAN OF OPERATION; LOCAL APPROPRIATIONS.

The state treasurer is hereby appointed as the custodian of all moneys received, or which may hereafter be received, by the state by reason of any federal aid granted for maternal and child welfare service and for public health services, including the purposes as declared in Public Law Number 725 enacted by the 79th Congress of the United States, Chapter 958-2d Session and all amendments thereto, which moneys shall be expended in accordance with the purposes expressed in the acts of congress granting such aid and solely in accordance with plans to be prepared by the state

commissioner. The plans so to be prepared by the commissioner for maternal and child health service shall be approved by the United States Children's Bureau; and the plans of the commissioner for public health service shall be approved by the United States Public Health Service. Such plans shall include the training of personnel for both state and local health work and conform with all the requirements governing federal aid for these purposes. Such plans shall be designed to secure for the state the maximum amount of federal aid which is possible to be secured on the basis of the available state, county, and local appropriations for such purposes. The commissioner shall make reports, which shall be in such form and contain such information as may be required by the United States Children's Bureau or the United States Public Health Service, as the case may be; and comply with all the provisions, rules, and regulations which may be prescribed by these federal authorities in order to secure the correction and verification of such reports.

History: *(5391-1) Ex1936 c 70 s 1; 1947 c 485 s 1; 1977 c 305 s 45*

144.11 RULES.

The commissioner may make such reasonable rules as may be necessary to carry into effect the provisions of section 144.10 and alter, amend, suspend, or repeal any of such rules.

History: *(5391-2) Ex1936 c 70 s 2; 1977 c 305 s 45; 1985 c 248 s 70*

144.12 REGULATION, ENFORCEMENT, LICENSES, FEES.

Subdivision 1. **Rules.** The commissioner may adopt reasonable rules pursuant to chapter 14 for the preservation of the public health. The rules shall not conflict with the charter or ordinance of a city of the first class upon the same subject. The commissioner may control, by rule, by requiring the taking out of licenses or permits, or by other appropriate means, any of the following matters:

(1) The manufacture into articles of commerce, other than food, of diseased, tainted, or decayed animal or vegetable matter;

(2) The business of scavengering and the disposal of sewage;

(3) The location of mortuaries and cemeteries and the removal and burial of the dead;

(4) The management of boarding places for infants and the treatment of infants in them;

(5) The pollution of streams and other waters and the distribution of water by persons for drinking or domestic use;

(6) The construction and equipment, in respect to sanitary conditions, of schools, hospitals, almshouses, prisons, and other public institutions, and of lodging houses and other public sleeping places kept for gain;

(7) The treatment, in hospitals and elsewhere, of persons suffering from communicable diseases, including all manner of venereal disease and infection, the disinfection and quarantine of persons and places in case of those diseases, and the reporting of sicknesses and deaths from them;

Neither the commissioner nor any local board of health nor director of public health may adopt any rule or regulation for the treatment in any penal or correctional institution of any person suffering from any communicable disease or venereal disease or infection, which requires the involuntary detention of any person after the expiration of the period of sentence to the penal or correctional institution, or after the expiration of the period to which the sentence may be reduced by good time allowance or by the lawful order of any judge or the department of corrections;

(8) The prevention of infant blindness and infection of the eyes of the newly born by the designation, from time to time, of one or more prophylactics to be used in those cases and in the manner that the commissioner directs, unless specifically objected to by a parent of the infant;

(9) The furnishing of vaccine matter; the assembling, during epidemics of smallpox, with other persons not vaccinated, but no rule of the board or of any public board or officer shall at any time compel the vaccination of a child, or exclude, except during epidemics of smallpox and when approved by the local board of education, a child from the public schools for the reason that the child has not been vaccinated; any person required to be vaccinated may select for that purpose any licensed physician and no rule shall require the vaccination of any child whose physician certifies that by reason of the child's physical condition vaccination would be dangerous;

(10) The accumulation of filthy and unwholesome matter to the injury of the public health and its removal;

(11) The collection, recording, and reporting of vital statistics by public officers and the furnishing of information to them by physicians, undertakers, and others of births, deaths, causes of death, and other pertinent facts;

(12) The construction, equipment, and maintenance, in respect to sanitary conditions, of lumber camps, migratory or migrant labor camps, and other industrial camps;

(13) The general sanitation of tourist camps, summer hotels, and resorts in respect to water supplies, disposal of sewage, garbage, and other wastes and the prevention and control of communicable diseases; and, to that end, may prescribe the respective duties of county and local health officers; and all county and local boards of health shall make such investigations and reports and obey such directions as the commissioner may require or give and, under the supervision of the commissioner, enforce the rules;

(14) Atmospheric pollution which may be injurious or detrimental to public health;

(15) Sources of radiation, and the handling, storage, transportation, use and disposal of radioactive isotopes and fissionable materials; and

(16) The establishment, operation and maintenance of all clinical laboratories not owned, or functioning as a component of a licensed hospital. These laboratories shall not include laboratories owned or operated by five or less licensed practitioners of the healing arts, unless otherwise provided by federal law or regulation, and in which these practitioners perform tests or procedures solely in connection with the treatment of their patients. Rules promulgated under the authority of this clause, which shall not take effect until federal legislation relating to the regulation and improvement of clinical laboratories has been enacted, may relate at least to minimum requirements for external and internal quality control, equipment, facility environment, personnel, administration and records. These rules may include the establishment of a fee schedule for clinical laboratory inspections. The provisions of this clause shall expire 30 days after the conclusion of any fiscal year in which the federal government pays for less than 45 percent of the cost of regulating clinical laboratories.

Subd. 2. The commissioner may regulate the general sanitation of mass gatherings by promulgation of rules in respect to, but not limited to, the following areas: water supply, disposal of sewage, garbage and other wastes, the prevention and control of communicable diseases, the furnishing of suitable and adequate sanitary accommodations, and all other reasonable and necessary precautions to protect and insure the health, comfort and safety of those in attendance. No permit, license, or other prior approval shall be required of the commissioner for a mass gathering. A "mass gathering" shall mean an actual or reasonably anticipated assembly of more than 1,500 persons which will continue, or may reasonably be expected to continue, for a period of more than ten consecutive hours and which is held in an open space or temporary structure especially constructed, erected or assembled for the gathering. For purposes of this subdivision, "mass gatherings" shall not include public gatherings sponsored by a political subdivision or a nonprofit organization.

Subd. 3. Applications for licenses or permits issued pursuant to this section shall be submitted with a fee prescribed by the commissioner pursuant to section 144.122. Licenses or permits shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

History: *(5345) RL s 2131; 1917 c 345 s 1; 1923 c 227 s 1; 1951 c 537 s 1; 1953 c 134 s 1; 1957 c 361 s 1; 1975 c 310 s 4; 1975 c 351 s 1; 1977 c 66 s 10; 1977 c 305 s 45; 1977 c 406 s 1; 1983 c 359 s 9; 1985 c 248 s 70; 1986 c 444*

144.121 X-RAY MACHINES AND FACILITIES USING RADIUM; FEES; PERIODIC INSPECTIONS.

Subdivision 1. The fee for the registration for X-ray machines and radium required to be registered under rules adopted by the state commissioner of health pursuant to section 144.12, shall be in an amount prescribed by the commissioner pursuant to section 144.122. The first fee for registration shall be due on January 1, 1975. The registration shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

Subd. 2. Periodic radiation safety inspections of the sources of ionizing radiation shall be made by the state commissioner of health. The frequency of safety inspections shall be prescribed by the commissioner on the basis of the frequency of use of the source of ionizing radiation; provided that each source shall be inspected at least once every four years.

History: *1974 c 81 s 1; 1975 c 310 s 35; 1977 c 305 s 45; 1985 c 248 s 70*

144.122 LICENSE AND PERMIT FEES.

The state commissioner of health, by rule, may prescribe reasonable procedures and fees for filing with the commissioner as prescribed by statute and for the issuance of original and renewal permits, licenses, registrations and certifications issued under authority of the commissioner. The expiration dates of the various licenses, permits, registrations and certifications as prescribed by the rules shall be plainly marked thereon. Fees may include application and examination fees and a penalty fee for renewal applications submitted after the expiration date of the previously issued permit, license, registration, and certification. The commissioner may also prescribe, by rule, reduced fees for permits, licenses, registrations, and certifications when the application therefor is submitted during the last three months of the permit, license, registration, or certification period. Fees proposed to be prescribed in the rules shall be first approved by the department of finance. All fees proposed to be prescribed in rules shall be reasonable. The fees shall be in an amount so that the total fees collected by the commissioner will, where practical, approximate the cost to the commissioner in administering the program. All fees collected shall be deposited in the state treasury and credited to the general fund unless otherwise specifically appropriated by law for specific purposes.

History: *1974 c 471 s 1; 1975 c 310 s 36; 1977 c 305 s 45; 1985 c 248 s 70; 1986 c 444*

144.123 FEES FOR DIAGNOSTIC LABORATORY SERVICES; EXCEPTIONS.

Subdivision 1. Except for the limitation contained in this section, the commissioner of health shall charge a handling fee for each specimen submitted to the department of health for analysis for diagnostic purposes by any hospital, private laboratory, private clinic, or physician. No fee shall be charged to any entity which receives direct or indirect financial assistance from state or federal funds administered by the department of health, including any public health department, nonprofit community clinic, venereal disease clinic, family planning clinic, or similar entity. The commissioner of health may establish by rule other exceptions to the handling fee as may be necessary to gather information for epidemiologic purposes. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the general fund.

Subd. 2. The commissioner of health shall promulgate rules, in accordance with chapter 14, which shall specify the amount of the handling fee prescribed in subdivision 1. The fee shall approximate the costs to the department of handling specimens including reporting, postage, specimen kit preparation, and overhead costs. The fee prescribed in subdivision 1 shall be $1.50 per specimen until the commissioner promulgates rules pursuant to this subdivision.

History: *1979 c 49 s 1; 1982 c 424 s 130*

144.125 TESTS OF INFANTS FOR INBORN METABOLIC ERRORS CAUSING MENTAL RETARDATION.

It is the duty of (1) the administrative officer or other person in charge of each institution caring for infants 28 days or less of age and (2) the person required in pursuance of the provisions of section 144.215, to register the birth of a child, to cause to have administered to every such infant or child in its care tests for phenylketonuria and other inborn errors of metabolism causing mental retardation in accordance with rules prescribed by the state commissioner of health. Testing and the recording and reporting of the results of such tests shall be performed at such times and in such manner as may be prescribed by the state commissioner of health. The provisions of this section shall not apply to any infant whose parents object thereto on the grounds that such tests and treatment conflict with their religious tenets and practices.

History: *1965 c 205 s 1; 1977 c 305 s 45; 1Sp1981 c 4 art 1 s 75; 1985 c 248 s 70; 1986 c 444*

144.126 PHENYLKETONURIA TESTING PROGRAM.

The commissioner shall provide on a statewide basis without charge to the recipient, treatment control tests for which approved laboratory procedures are available for phenylketonuria and other metabolic diseases causing mental retardation.

History: *1Sp1985 c 9 art 2 s 9*

144.128 TREATMENT FOR POSITIVE DIAGNOSIS, REGISTRY OF CASES.

The commissioner shall:

(1) make arrangements for the necessary treatment of diagnosed cases of phenylketonuria and other metabolic diseases when treatment is indicated and the family is uninsured and, because of a lack of available income, is unable to pay the cost of the treatment;

(2) maintain a registry of cases of phenylketonuria and other metabolic diseases for the purpose of follow-up services to prevent mental retardation; and

(3) adopt rules to carry out section 144.126 and this section.

History: *1Sp1985 c 9 art 2 s 10*

144.13 RULES, NOTICE PUBLISHED.

Three weeks published notice of such rules, if of general application throughout the state, shall be given at the seat of government; if of local application only, as near such locality as practicable. Special rules applicable to particular cases shall be sufficiently noticed when posted in a conspicuous place upon or near the premises affected. Fines collected for violations of rules adopted by the commissioner shall be paid into the state treasury; and of local boards and officers, into the county treasury.

History: *(5346) RL s 2132; 1977 c 305 s 45; 1985 c 248 s 70*

144.14 QUARANTINE OF INTERSTATE CARRIERS.

When necessary the commissioner may establish and enforce a system of quarantine against the introduction into the state of any plague or other communicable disease by common carriers doing business across its borders. Its members, officers, and agents may board any conveyance used by such carriers to inspect the same and, if such conveyance be found infected, may detain the same and isolate and quarantine any or all persons found thereon, with their luggage, until all danger of communication of disease therefrom is removed.

History: *(5347) RL s 2133; 1977 c 305 s 45*

144.145 FLUORIDATION OF MUNICIPAL WATER SUPPLIES.

For the purpose of promoting public health through prevention of tooth decay, the person, firm, corporation, or municipality having jurisdiction over a municipal water supply, whether publicly or privately owned or operated, shall control the quantities of fluoride in the water so as to maintain a fluoride content prescribed by the state commissioner of health. In the manner provided by law, the state commissioner of health shall promulgate rules relating to the fluoridation of public water supplies which shall include, but not be limited to the following: (1) The means by which fluoride is controlled; (2) the methods of testing the fluoride content; and (3) the records to be kept relating to fluoridation. The state commissioner of health shall enforce the provisions of this section. In so doing the commissioner shall require the fluoridation of water in all municipal water supplies on or before January 1, 1970. The state commissioner of health shall not require the fluoridation of water in any municipal water supply where such water supply in the state of nature contains sufficient fluorides to conform with the rules of such commissioner.

History: *1967 c 603 s 1; 1977 c 305 s 45; 1985 c 248 s 70; 1986 c 444*

144.146 TREATMENT OF CYSTIC FIBROSIS.

Subdivision 1. **Program.** The commissioner of health shall develop and conduct a program including medical care and hospital treatment for persons aged 21 or over who are suffering from cystic fibrosis.

Subd. 2. [Repealed, 1978 c 762 s 9]

History: *1975 c 409 s 1,2; 1977 c 305 s 45*

144.15 [Repealed, 1945 c 512 s 37]

VITAL STATISTICS

144.151 Subdivision 1. [Repealed, 1978 c 699 s 17]
Subd. 2. [Repealed, 1978 c 699 s 17]
Subd. 3. [Repealed, 1978 c 699 s 17]
Subd. 4. [Repealed, 1978 c 699 s 17]
Subd. 5. [Repealed, 1978 c 699 s 17]
Subd. 6. [Repealed, 1978 c 699 s 17]
Subd. 7. [Repealed, 1978 c 699 s 17]
Subd. 8. [Repealed, 1978 c 699 s 17; 1978 c 790 s 4]
Subd. 9. [Repealed, 1978 c 699 s 17; 1978 c 790 s 4]
144.152 [Repealed, 1978 c 699 s 17]
144.153 [Repealed, 1978 c 699 s 17]
144.154 [Repealed, 1978 c 699 s 17]
144.155 [Repealed, 1978 c 699 s 17]
144.156 [Repealed, 1978 c 699 s 17]
144.157 [Repealed, 1978 c 699 s 17]
144.158 [Repealed, 1978 c 699 s 17]
144.159 [Repealed, 1978 c 699 s 17]
144.16 [Repealed, 1945 c 512 s 37]
144.161 [Repealed, 1978 c 699 s 17]
144.162 [Repealed, 1978 c 699 s 17]
144.163 [Repealed, 1978 c 699 s 17]
144.164 [Repealed, 1978 c 699 s 17]
144.165 [Repealed, 1978 c 699 s 17]
144.166 [Repealed, 1978 c 699 s 17]
144.167 [Repealed, 1978 c 699 s 17]
144.168 [Repealed, 1978 c 699 s 17]

MINNESOTA STATUTES

CHAPTER 144.381, MINNESOTA SAFE DRINKING WATER ACT

of any of the provisions of this section, the commissioner may, with or without a hearing, order any person to desist from causing such pollution and to comply with such direction as the commissioner may deem proper and expedient in the premises. Such order shall be served forthwith upon the person found to have violated such provisions.

History: *(5375) RL s 2147; 1977 c 305 s 45; 1986 c 444*

144.36 APPEAL TO DISTRICT COURT.

Within five days after service of the order, any person aggrieved thereby may appeal to the district court of the county in which such polluted source of water supply is situated; and such appeal shall be taken, prosecuted, and determined in the same manner as provided in section 145.19. During the pendency of the appeal the pollution against which the order has been issued shall not be continued and, upon violation of such order, the appeal shall forthwith be dismissed.

History: *(5376) RL s 2148*

144.37 OTHER REMEDIES PRESERVED.

Nothing in sections 144.36 and 145.17 shall curtail the power of the courts to administer the usual legal and equitable remedies in cases of nuisances or of improper interference with private rights.

History: *(5377) RL s 2149*

144.371 [Renumbered 115.01]
144.372 [Renumbered 115.02]
144.373 [Renumbered 115.03]
144.374 [Renumbered 115.04]
144.375 [Renumbered 115.05]
144.376 [Renumbered 115.06]
144.377 [Renumbered 115.07]
144.378 [Renumbered 115.08]
144.379 [Renumbered 115.09]
144.38 [Repealed, 1967 c 882 s 11]

SAFE DRINKING WATER ACT

144.381 CITATION.

Sections 144.381 to 144.387 may be cited as the "safe drinking water act of 1977."

History: *1977 c 66 s 1*

144.382 DEFINITIONS.

Subdivision 1. For the purposes of sections 144.381 to 144.387, the following terms have the meanings given.

Subd. 2. "Commissioner" means the state commissioner of health.

Subd. 3. "Federal regulations" means rules promulgated by the federal environmental protection agency, or its successor agencies.

Subd. 4. "Public water supply" means a system providing piped water for human consumption, and either containing a minimum of 15 service connections or 15 living units, or serving an average of 25 persons daily for 60 days of the year. "Public water supply" includes a collection, treatment, storage, and distribution facility under control of an operator and used primarily in connection with the system, and a collection or pretreatment storage facility used primarily in connection with the system but not under control of an operator.

Subd. 5. "Supplier" means a person who owns, manages or operates a public water supply.

History: *1977 c 66 s 2; 1977 c 305 s 45*

144.383 AUTHORITY OF COMMISSIONER.

In order to insure safe drinking water in all public water supplies, the commissioner has the following powers:

(a) To approve the site, design, and construction and alteration of public water supply;

(b) To enter the premises of a public water supply, or part thereof, to inspect the facilities and records kept pursuant to rules promulgated by the commissioner, to conduct sanitary surveys and investigate the standard of operation and service delivered by public water supplies;

(c) To contract with local boards of health, created pursuant to section 145.913, for routine surveys, inspections, and testing of public water supply quality;

(d) To develop an emergency plan to protect the public when a decline in water quality or quantity creates a serious health risk, and to issue emergency orders if a health risk is imminent;

(e) To promulgate rules, pursuant to chapter 14 but no less stringent than federal regulation, which may include the granting of variances and exemptions.

History: *1977 c 66 s 3; 1977 c 305 s 45; 1982 c 424 s 130*

144.384 NOTICE OF VIOLATION.

Upon discovery of a violation of a maximum contaminant level or treatment technique, the commissioner shall promptly notify the supplier of the violation, state the rule violated, and state a date by which the violation must be corrected or by which a request for variance or exemption must be submitted.

History: *1977 c 66 s 4; 1977 c 305 s 45*

144.385 PUBLIC NOTICE.

If a public water system has violated a rule of the commissioner, has a variance or exemption granted, or fails to comply with the terms of the variance or exemption, the supplier shall provide public notice of the fact pursuant to the rules of the commissioner.

History: *1977 c 66 s 5; 1977 c 305 s 45*

144.386 PENALTIES.

Subdivision 1. A person who violates a rule of the commissioner, fails to comply with the terms of a variance or exemption, or fails to request a variance or exemption by the date specified in the notice from the commissioner, may be fined up to $1,000 for each day the offense continues, in a civil action brought by the commissioner in district court. All fines shall be deposited in the general fund of the state treasury.

Subd. 2. A person who intentionally or repeatedly violates a rule of the commissioner, or fails to comply with an emergency order of the commissioner, is guilty of a gross misdemeanor, and may be fined not more than $10,000, imprisoned not more than one year, or both.

Subd. 3. A supplier who fails to comply with the provisions of section 144.385, or disseminates false or misleading information relating to the notice required in section 144.385, is subject to the penalties described in subdivision 2.

Subd. 4. In addition to other remedies, the commissioner may institute an action to enjoin further violations of sections 144.381 to 144.385.

History: *1977 c 66 s 6; 1977 c 305 s 45; 1984 c 628 art 3 s 11*

144.387 COSTS.

If the state prevails in any civil action under section 144.386, the court may award reasonable costs and expenses to the state.

History: *1977 c 66 s 7*

MINNESOTA STATUTES

CHAPTER 452, MUNICIPAL OWNERSHIP

451.08 LIMITATION.

Section 451.07 shall not be construed as authorizing the governing body to change any rates for such service, or the amount of payment for the use of the streets and other public property when any such rates or payments have been embodied in an agreement now or hereafter existing between the city and the public service corporation, which agreement determines the amount of such rates or payment for a definite period of time.

History: *(1491-7) 1935 c 286 s 3*

451.09 STEAM HEAT SYSTEMS; DISCONTINUANCE OR CONVERSION.

Subdivision 1. Any steam heat system operated by a public utilities board or commission in any home rule charter city may be discontinued in whole or in part at the discretion of such board or commission. Funds may be expended at the discretion of such board or commission to compensate persons to whom service is discontinued for the expense of converting to some other type of heat system. Prior to exercising any of the authority granted by this section, the public utilities board or commission shall obtain the approval of the governing body of the city. The authority granted by this section shall apply notwithstanding any statute, city charter, or other law to the contrary. This subdivision shall not apply to Austin, Marshall and Virginia.

Subd. 2. A public utilities board or commission operating a steam heat system in a home rule charter city shall inform the commissioner of energy and economic development of its plans to discontinue operation at least two years prior to the intended date of discontinuance of operation.

History: *1969 c 796 s 1; 1976 c 44 s 46; Ex1979 c 2 s 41; 1981 c 356 s 221; 1983 c 289 s 115 subd 1*

CHAPTER 452

MUNICIPAL OWNERSHIP

452.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivision 3, for the purposes of sections 452.08 to 452.14, shall be given the meaning subjoined thereto.

Subd. 2. [Repealed, 1976 c 44 s 70]

Subd. 3. **Public utilities.** "Public utilities" shall include street railways, telephones, waterworks, gas works, electric light, heat or power works, public docks, union depots and terminal systems, ice plants, stone quarries, creosoting works, and public markets.

History: *(1311, 1484) 1907 c 452 s 1; 1913 c 310 s 1; 1976 c 44 s 47*

452.02 [Repealed, 1976 c 44 s 70]
452.03 [Repealed, 1976 c 44 s 70]
452.04 [Repealed, 1976 c 44 s 70]
452.05 [Repealed, 1976 c 44 s 70]
452.06 [Repealed, 1976 c 44 s 70]
452.07 [Repealed, 1976 c 44 s 70]

452.08 ACQUISITION AND OPERATION.

Every city of the first class in this state shall have the power to own, construct, acquire, purchase, maintain, and operate any public utility within its corporate limits, and to lease the same, or any part of the same, to any company incorporated under the laws of this state, for the purpose of operating such public utility for any period not longer than 20 years, on such terms and conditions as the council shall deem for the best interests of the public.

Any city of the first class now owning and operating its own waterworks, or other public utilities, may continue to own and operate the same in the same manner as if now authorized by law to own and operate the same, without submitting any proposition so to do to the electors thereof, and it may by a three-fifths vote of the council or other governing body and without submission to the electors thereof issue bonds and certificates of indebtedness in the manner and proportions provided in sections 452.08 to 452.14 for the purpose of refunding all bonds issued for the construction and creation of the utility, and the remainder of the proceeds thereof, if any, shall be covered into the treasury of the city as a sinking fund for the redemption of any existing bonds, or for the purchase and acquisition of any new bonds of the city offered by the city.

It shall be lawful for any city of the first class to incorporate in any grant of the right to construct or operate any public utility, a reservation of the right on ... part ... the city to take over all or part of the public utility, at or before the expiration of the grant upon such terms and conditions as may be provided in the grant; it shall also be lawful to provide in the grant that in case the reserved right be not exercised by the city and it shall grant a right to another company to operate the public utility in the streets and parts of streets occupied by its grantee under the former grant, the new grantee shall

purchase and take over the public utility of the former grantee, upon the terms that the city might have taken it over, and it shall be lawful for the council of the city to make the grant containing such a reservation for either the construction or operation or both the construction and operation of the public utility, in, upon, and along any of the public streets, alleys, or ways therein, or portions thereof, in which the public utility is already located at the time of making the grant, without the petition or consent of any of the owners of the land abutting or fronting upon any street, public alley, or way, or portion thereof, covered by the grant.

No ordinance authorizing the lease of any public utility for any period, nor any ordinance renewing any lease, shall go into effect until the expiration of 60 days from and after its passage. If, within these 60 days, there is filed with the clerk of the city a petition signed by ten percent of the voters voting at the last preceding election for mayor, in the city, asking that the ordinance be submitted to a popular vote, then the ordinance shall not go into effect unless the question of the adoption of the ordinance shall first be submitted to the electors of the city and are approved by a majority of those voting thereon.

The signatures of the petition need not all be appended to one paper, but after each signer's signature, which shall be in the signer's own handwriting, the signer shall add the place of residence, giving the street number. One of the signers of each paper shall make oath before an officer competent to administer oaths that each signature to the paper appended is the signature of the person whose name purports to be thereto subscribed. The council of any city which shall decide by vote of its electors to acquire or construct any public utility, shall have the power, unless otherwise provided by law, to make all needful rules and regulations respecting the operation of the same, including the power to fix and prescribe rates and charges. For the purpose of acquiring a public utility either by purchase or construction, as provided for in sections 452.08 to 452.14 or for the equipment of any such public utility, and in addition to the certificates of indebtedness provided for in section 452.09, any city may borrow money and issue its negotiable bonds to an amount not exceeding one-fifth the cost thereof, pledging the faith and credit of the city therefor; but no such bonds shall be issued until the question of the issuance of certificates of indebtedness shall have been approved by a majority of the electors voting thereon as provided for in section 452.09, and then only upon a three-fifths vote of the council or other governing body. In the exercise of any of the powers, granted by sections 452.08 to 452.14, any city shall have power to acquire, take, and hold any and all franchises and necessary property, real, personal, or mixed, for the purposes specified in sections 452.08 to 452.14, either by purchase or condemnation in the manner provided by law for the taking and condemning of private property for public use, but in no valuation of public utility property for the purpose of any such acquisition, except of public utilities now operating under existing franchises shall any sum be included as the value of any earning power of the utility, or of the unexpired portion of any franchise granted by the city.

In case of the leasing by any city of any public utility owned by it, the rental reserved shall be based on both the actual value of the tangible property and of the franchise contained in the lease, and the rental shall not be less than a sufficient sum to meet the annual interest upon all outstanding bonds or certificates issued by the city on account of any such public utility.

History: *(1485) 1913 c 310 s 2; 1986 c 444*

452.09 LIMIT OF BONDS AND CERTIFICATES.

In addition to the bonds pledging the faith and credit of the city, as provided for in section 452.08, any city of the first class may issue and dispose of interest-bearing certificates, which shall be a lien or charge against the public utility property for the acquisition or construction of which they were issued and shall be payable out of the specified portion of the revenues or income to be derived therefrom, but which shall under no circumstances be or become an obligation or liability of the city or payable out of the general funds thereof, nor shall the certificates be deemed a part of the

indebtedness of the city for any purpose. The certificates, together with the bonds provided for in section 452.08, shall not be issued on the public utility property in an amount in excess of the cost to the city of the property as provided in section 452.08, and ten percent of the cost in addition thereto. In order to secure the payment of the public utility certificates and the interest thereon, the city may convey, by way of mortgage or deed of trust, any or all of the property thus acquired or to be acquired through the issue thereof, which mortgage or deed of trust shall be executed in such a manner as directed by the council and acknowledged and recorded in the manner provided by law for the acknowledgment and recording of mortgages of real estate and may contain such conditions and provisions, not in conflict with the provisions of sections 452.08 to 452.14, as may be deemed necessary to fully secure the payment of the certificates described therein. The mortgage or deed of trust may carry the grant of a privilege or right to maintain and operate the property covered thereby, for a period not exceeding 20 years from and after the date the property may come in the possession of any person or corporation as a result of foreclosure proceedings; which privilege or right may fix the rates which the person or corporation securing the same as a result of the foreclosure proceedings shall be entitled to charge in the operation of the property, for a period not exceeding 20 years. When, and as often as default shall be made in the payment of the certificate issued or secured by mortgage or deed of trust, or in the payment of the interest thereon when due, and the default shall have continued for the space of 12 months after notice thereof has been given to the mayor and financial officer of the city issuing the certificates, it shall be lawful for the mortgagee or trustee, upon the request of the holder or holders of a majority in amount of the certificates issued and outstanding under the mortgage or deed of trust, to declare the whole of the principal of all the certificates outstanding to be at once due and payable, and to proceed to foreclose the mortgage or deed of trust in any court of competent jurisdiction. At a foreclosure sale, the mortgagee or the holders of the certificates may become the purchaser or purchasers and the rights and privileges sold, if the mortgagee or the holders be the highest bidders. Any public utility acquired under the foreclosure shall be subject to regulation by the corporate authorities of the city to the same extent as if the right to construct, maintain, and operate the property had been acquired through a direct grant without the intervention of foreclosure proceedings; provided, that no such public utility certificates or mortgage shall ever be issued by any city under the provisions of sections 452.08 to 452.14, unless and until the question of the adoption of the ordinance of the council making provision of the issue thereof shall have first been submitted to a popular vote and approved by a majority of the qualified voters of the city voting upon the question.

History: *(1486) 1913 c 310 s 3; 1986 c 444*

452.10 BOOKS; REPORT.

Every city of the first class owning and operating a public utility shall keep the books of account for the public utility distinct from other city accounts, and in such manner as to show the true and complete financial results of the city ownership, or ownership and operation, as the case may be. These accounts shall be so kept as to show the actual cost to the city of the public utilities owned; all cost of maintenance, depreciation, extension, and improvement; all operating expenses of every description, in case of city operation, the amount set aside for sinking fund purposes. The council shall cause to be printed annually, for public distribution, a report showing the financial results of the city ownership, or ownership and operation.

History: *(1487) 1913 c 310 s 4*

452.11 SUBMISSION TO VOTERS.

No city of the first class shall acquire or construct any public utility under the terms of sections 452.08 to 452.14 unless the proposition to acquire or construct same has first been submitted to the qualified electors of the city at a general city election or at a special election called for that purpose, and been approved by a majority vote of all electors voting upon the proposition.

The question of issuing public utility certificates as provided in section 452.09 may, at the option of the council, be submitted at the same election as the question of the acquisition or construction of the public utility.

History: *(1488) 1913 c 310 s 5*

452.12 SUBMISSION; ELECTION.

In all cases provided in sections 452.08 to 452.14 for the submission of questions or propositions to popular vote the council shall pass an ordinance stating the substance of the proposition or question to be voted upon and designating the election at which the question or proposition is to be submitted, which may be at any general or city election or special election called for that purpose; provided, that the election shall not be held sooner than 30 days from and after the passage of the ordinance.

Notice of special election which shall be held in any city of the first class under sections 452.08 to 452.14 and all proceedings respecting the same shall conform as nearly as may be to the law governing other special elections therein.

All ballots, as to any proposition or question submitted pursuant to the terms of sections 452.08 to 452.14 shall be delivered to the election judges, shall be deposited in a separate box and shall be counted, canvassed, and returned, as is provided by law in case of other ballots, and the tally sheets and return blanks shall contain suitable columns and spaces therefor.

No defect or omission in the calling, giving notice, or holding of any election under sections 452.08 to 452.14 shall in any manner affect the validity of the election unless it shall affirmatively appear that the defect or omission changed the result of the election.

History: *(1489) 1913 c 310 s 6*

452.13 TERM OF GRANT OR LEASE.

Nothing in sections 452.08 to 452.14 contained shall be construed to authorize any city of the first class to make any grants or to lease any public utility for a period exceeding 20 years from the making of the grant or lease; provided, that when a right to maintain and operate a public utility for a period not exceeding 20 years is contained in a mortgage or deed of trust to secure any of the certificates (and no such right shall be implied), the period shall commence as provided in section 452.09.

History: *(1490) 1913 c 310 s 7*

452.14 [Repealed, 1980 c 460 s 32]
452.18 [Repealed, 1976 c 44 s 70]
452.19 [Repealed, 1976 c 44 s 70]
452.20 [Repealed, 1976 c 44 s 70]

CHAPTER 453

MUNICIPAL ELECTRIC POWER

453.01 [Repealed, 1976 c 44 s 70]
453.02 [Repealed, 1976 c 44 s 70]
453.03 [Repealed, 1976 c 44 s 70]
453.04 [Repealed, 1976 c 44 s 70]
453.05 [Repealed, 1976 c 44 s 70]
453.06 [Repealed, 1976 c 44 s 70]
453.07 [Repealed, 1976 c 44 s 70]
453.08 [Repealed, 1976 c 44 s 70]
453.09 [Repealed, 1976 c 44 s 70]
453.10 [Repealed, 1976 c 44 s 70]
453.11 [Repealed, 1976 c 44 s 70]
453.12 [Repealed, 1976 c 44 s 70]
453.13 [Repealed, 1976 c 44 s 70]
453.14 [Repealed, 1976 c 44 s 70]
453.15 [Repealed, 1965 c 45 s 73]
453.16 [Repealed, 1965 c 45 s 73]
453.17 [Repealed, 1965 c 45 s 73]
453.18 [Repealed, 1965 c 45 s 73]
453.19 [Repealed, 1965 c 45 s 73]
453.20 [Repealed, 1965 c 45 s 73]
453.21 [Repealed, 1965 c 45 s 73]
453.22 [Repealed, 1965 c 45 s 73]
453.23 [Repealed, 1965 c 45 s 73]
453.24 [Repealed, 1965 c 45 s 73]
453.25 [Repealed, 1965 c 45 s 73]
453.26 [Repealed, 1965 c 45 s 73]
453.27 [Repealed, 1965 c 45 s 73]
453.28 [Repealed, 1965 c 45 s 73]
453.29 [Repealed, 1965 c 45 s 73]
453.30 [Repealed, 1965 c 45 s 73]
453.31 [Repealed, 1965 c 45 s 73]

453.51 INTENT.

Sections 453.51 to 453.62 are intended to provide a means for those Minnesota cities which now or hereafter own and operate a utility pursuant to law for the local distribution of electric energy to secure, by individual or joint action among themselves or by contract with other public or private entities within or outside the state, an adequate, economical, and reliable supply of energy. It is also the purpose of sections 453.51 to 453.62 to provide a means for Minnesota cities to construct and operate

1987 REGULAR SESSION

CHAPTER 358, MERGING OF WATERSHED DISTRICTS AND
SOIL AND WATER CONSERVATION DISTRICTS

Subd. 2. [FEE.] Every annual report filed pursuant to section 83.23, subdivision 2, shall be accompanied by a fee of ~~$50~~ $75. Every annual report filed pursuant to section 83.23, subdivision 3, shall be accompanied by a fee of ~~$100~~ $150.

Sec. 101. Minnesota Statutes 1986, section 105.73, is amended to read:

105.73 [DEFINITIONS.]

Unless the context clearly indicates a different meaning is intended, the following terms for the purposes of this chapter shall be given the meanings ascribed to them in this section.

Board -- ~~Minnesota water resources~~ Board of water and soil resources.

Proceeding -- Any procedure under any of the laws enumerated in section 105.74 however administrative discretion or duty thereunder may be invoked in any instance.

Agency -- Any state officer, board, commission, bureau, division, or agency, other than a court, exercising duty or authority under any of the laws enumerated in section 105.74.

Court -- The court means the district court or a judge thereof before whom the proceedings are pending.

Question of water policy -- Where use, disposal, pollution, or conservation of water is a purpose, incident, or factor in a proceeding, the question or questions of state water law and policy involved, including either (a) determination of the governing policy of state law in the proceeding, resolving apparent inconsistencies between different statutes, (b) the proper application of that policy to facts in the proceeding when application is a matter of administrative discretion, or both (a) and (b).

Sec. 102. Minnesota Statutes 1986, section 110B.02, subdivision 2, is amended to read:

Subd. 2. [BOARD.] "Board" means the board of water and soil resources board.

Sec. 103. [110B.35] [BOARD OF WATER AND SOIL RESOURCES.]

Subdivision 1. [MEMBERSHIP.] The board of water and soil resources is composed of 12 voting members knowledgeable of water and soil problems and conditions within the state, and four ex officio nonvoting members.

Subd. 2. [VOTING MEMBERS.] (a) The voting members are:

(1) three county commissioners;

(2) three soil and water conservation district supervisors;

(3) three watershed district or watershed management organization representatives; and

(4) three citizens who are not employed by, or the appointed or elected official of, any governmental office, board, or agency.

(b) Voting members must be distributed across the state with at least three members but not more than five members from the metropolitan area, as defined by section 473.121, subdivision 2; and one from each of the current soil and water conservation administrative regions.

(c) Voting members are appointed by the governor. In making the appointments, the governor may consider persons recommended by the association of Minnesota counties, the Minnesota association of soil and water conservation districts, and the Minnesota association of watershed districts. The list submitted by an association must contain at least three nominees for each position to be filled.

(d) The membership terms, compensation, removal of members and filling of vacancies on the board for voting members are as provided in section 15.0575.

Subd. 3. [EX OFFICIO NONVOTING MEMBERS.] The following agencies shall each provide one nonvoting member to the board:

(1) department of agriculture;

(2) department of health;

(3) department of natural resources; and

(4) pollution control agency.

Subd. 4. [EMPLOYEES.] The board may employ an executive director in the unclassified service and other permanent and temporary employees in accordance with chapter 43A. The board may prescribe the powers and duties of its officers and employees and may authorize its employees and members of the board to act on behalf of the board.

Subd. 5. [OFFICERS; QUORUM; RECORDS; AUDIT.] The governor shall appoint a chair from among the voting members of the board with the advice and consent of the senate. The board shall elect a vice-chair and any other officers that it considers necessary from its membership. A majority of the board is a quorum. The board may hold public hearings and adopt rules necessary to execute its duties.

Subd. 6. [ADMINISTRATIVE SERVICES.] The commissioner of administration shall provide and make available within the department of agriculture suitable and adequate office facilities and space for the board. The commissioner of agriculture shall provide and make available administrative services required by the board in the administration of its functions.

Subd. 7. [POWERS AND DUTIES.] In addition to the powers and duties prescribed elsewhere, the board has the following powers and duties:

(a) It shall coordinate the water and soil resources planning activities of counties, soil and water conservation districts, watershed districts, watershed management organizations, and any other local units of government through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate.

(b) It shall facilitate communication and coordination among state agencies in cooperation with the environmental quality board, and between state and local units of government, in order to make the expertise and resources of state agencies involved in water and soil resources management available to the local units of government to the greatest extent possible.

(c) It shall coordinate state and local interests with respect to the study in southwestern Minnesota under United States Code, title 16, section 1009.

(d) It shall develop information and education programs designed to increase awareness of local water and soil resources problems and awareness of opportunities for local government involvement in preventing or solving them.

(e) It shall provide a forum for the discussion of local issues and opportunities relating to water and soil resources management.

(f) It shall adopt an annual budget and work program that integrate the various functions and responsibilities assigned to it by law.

(g) It shall report to the governor and the legislature by October 15 of each even-numbered year with an assessment of board programs and recommendations for any program changes and board membership changes necessary to improve state and local efforts in water and soil resources management.

Subd. 8. [COMMITTEE FOR DISPUTE RESOLUTION.] A committee of the board is established to hear and resolve disputes, appeals, and interventions under sections 105.72 to 105.79, 110B.25, 112.801, and 473.878, subdivision 7. The committee consists of the three citizen members specified in subdivision 1, paragraph (a), clause (4), and two additional members appointed by the board chair.

Sec. 104. Minnesota Statutes 1986, section 112.35, subdivision 4, is amended to read:

Subd. 4. "Board" means the Minnesota water resources board of water and soil resources established by section ~~105.71~~ 103.

Sec. 105. Minnesota Statutes 1986, section 116C.03, subdivision 2, is amended to read:

Subd. 2. The board shall include as members the director of the state planning agency, the director of the pollution control agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of transportation, the chair of the board of water and soil resources, and a representative of the governor's office designated by the governor. The governor shall appoint five members from the general public to the board, subject to the advice and consent of the senate. At least two of the five public members shall have knowledge of and be conversant in water management issues in the state.

MINNESOTA RULES

CHAPTER 4720, PUBLIC WATER SUPPLIES

CHAPTER 4720
DEPARTMENT OF HEALTH
PUBLIC WATER SUPPLIES

4720.0010 WATER SUPPLY AND SEWERAGE SYSTEMS.

No system of water supply or system for the disposal of sewage, industrial waste, garbage, or refuse, in case any such system is for public use or for the use of any considerable number of persons, or in case any such system affects or tends to affect the public health in any manner, shall be installed by any public agency or by any person or corporation, nor shall any such existing system be materially altered or extended, until complete plans and specifications for the installation, alteration, or extension, together with such information as the commissioner of health may require, have been submitted in duplicate and approved by the commissioner of health insofar as any features thereof affect or tend to affect the public health, and no construction shall take place except in accordance with the approved plans.

Statutory Authority: *MS s 144.08; 144.12 subd 1; 144.381 to 144.388*

History: *L 1977 c 305 s 39*

4720.0020 UNSAFE WATER CONNECTIONS.

There shall be no physical connection between water supply systems that are safe for domestic use and those that are unsafe for domestic use.

There shall be no provision for such a connection or arrangement by which unsafe water may be discharged or drawn into a safe water supply system.

Statutory Authority: *MS s 144.08; 144.12 subd 1; 144.381 to 144.388*

4720.0030 FLOURIDATION.

Subpart 1. **Application.** This part shall be applicable to all municipal water supplies, as required by Minnesota Statutes, section 144.145.

Subp. 2. **Fluoride content.** The fluoride content of the water shall be controlled to maintain an average concentration of 1.2 milligrams per liter; the concentration shall be neither less than 0.9 milligrams per liter nor more than 1.5 milligrams per liter.

Subp. 3. **Chemical feeder.** The chemical feeder apparatus for introducing fluoride to the water supply shall conform to the standards of the commissioner of health.

Subp. 4. **Testing.** Equipment for the adequate and reliable testing of the fluoride content shall be furnished for each installation. The method of testing the fluoride content of the water shall be approved by the commissioner of health. Approval shall require either a photometric colorimetric procedure, preceded when necessary by distillation or other treatment to remove interfering materials, or a fluoride-specific electrode and an associated potential measuring device. Continuous monitoring systems shall be approved when they can be installed to monitor a representative portion of the entire supply.

Subp. 5. **Samples collected daily.** Samples shall be collected daily at a point(s) in the distribution system representative of the entire supply. Sampling point(s) shall be located downstream sufficiently distant from the point(s) at which fluoride is fed into the water supply to ensure that the distance traversed and the time elapsed since the introduction of the fluoride concentrate is adequate to allow its complete mixing with the water. At least once each three months, at a time designated by the commissioner of health, a duplicate of the usual daily sample(s) shall be collected in containers furnished by the commissioner of health and sent to the Department of Health for comparative analysis.

Subp. 6. **Records of fluoridation.** Daily records of water fluoridation plant operations shall be maintained by the owners, officials, or their representatives. These records shall show the amount of water pumped, amount of fluoride chemical fed, fluoride test results, and any other pertinent information required by the commissioner of health. A report of the operation of each water fluoridation plant shall be submitted monthly to the commissioner of health on forms furnished by them.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388; 144.145*

History: *L 1977 c 305 s 39*

4720.0040 MUNICIPALITY APPROVAL OF WATER SUPPLY CONTRACTS.

No governing body of any municipality shall enter into any contract or agreement or renewal thereof for the furnishing and distribution, either or both, of water to be used for domestic purposes within the municipality until the approval of the commissioner of health, insofar as the sanitary features of the water supply system are concerned, has been obtained.

Statutory Authority: *MS s 144.12 subd 1*

History: *L 1977 c 305 s 39*

4720.0100 DEFINITIONS.

Subpart 1. **Scope.** The following definitions apply to parts 4720.0100 to 4720.3900, unless the context indicates otherwise.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of health, or his or her authorized representative.

Subp. 3. **Disinfectant.** "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

Subp. 4. **Dose equivalent.** "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

Subp. 5. **Exemption.** "Exemption" means a waiver which may be granted by the commissioner to a supply which is in operation on June 24, 1977:

A. when a maximum contaminant level or required treatment cannot be complied with because of economic or other compelling factors; and

B. if granting the waiver will not result in an unreasonable risk to health.

Such an exemption must be conditioned upon a schedule for compliance with these rules by the dates specified in part 4720.3500.

Subp. 6. **Federal act.** "Federal act" means the Safe Drinking Water Act of 1974, Public Law Number 93-523, title 42, United States Code, section 300, clause f, and amendments thereto.

Subp. 7. **Federal regulations.** "Federal regulations" means regulations dealing with public water supplies and drinking water quality, promulgated by the Administrator of the United States Environmental Protection Agency pursuant to the federal act.

Subp. 8. **Gross alpha particle activity.** "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

Subp. 9. **Gross beta particle activity.** "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

Subp. 10. **Halogen.** "Halogen" means one of the chemical elements chlorine, bromine, or iodine.

Subp. 11. **Man-made beta particle and photon emitters.** "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles or photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-238.

Subp. 12. **Maximum contaminant level.** "Maximum contaminant level" means the maximum permissible level of a contaminant (any physical, chemical, biological, or radiological substance or matter) in water which is delivered to the free flowing outlet of the ultimate user of a public water supply; except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except for those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

Subp. 13. **Maximum total trihalomethane potential.** "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25 degrees Celsius or above.

Subp. 14. **Person.** "Person" means an individual, partnership, copartnership, cooperative, public or private association or corporation, public subdivision, agency of the state or federal government or any other legal entity or its legal representative, agent, or assigns.

Subp. 15. **Picocurie.** "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

Subp. 16. **Public water supply.** "Public water supply" or "supply" means a system providing piped water for human consumption, and either containing a minimum of 15 service connections or 15 living units, or serving at least 25 persons daily for 60 days of the year. Such term includes:

A. Any collection, treatment, storage, and distribution facilities under control of the operator of the supply and used primarily in connection with the supply; and

B. Any collection or pretreatment storage facilities used primarily in connection with the supply but not under control of the operator. A public water supply is either a community or a noncommunity water supply.

(1) "Community water supply" means a public water supply or system which serves at least 15 service connections or living units used by year-round residents, or regularly serves at least 25 year-round residents.

(2) "Noncommunity water supply" means any public water supply that is not a community water supply. The following are given as examples of noncommunity water supplies and are in no way meant to be an exhaustive list: seasonal facilities such as children's camps, recreational camping areas, resorts, or year-round facilities which serve at least 25 persons who are not residents thereof, such as churches, entertainment facilities, factories, gasoline service stations, marinas, migrant labor camps, office buildings, parks, restaurants, schools.

Subp. 17. **Rem.** "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

Subp. 18. **Sanitary survey.** "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water supply for the purpose of evaluating the adequacy of the source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

Subp. 19. **Standard sample.** "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

Subp. 20. **Supplier.** "Supplier" means any person who owns, manages, or operates a public water supply, whether or not he is an operator certified pursuant to Minnesota Statutes, sections 115.71 to 115.82.

Subp. 21. **Total trihalomethanes.** "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds of trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform), rounded to two significant figures.

Subp. 22. **Trihalomethane.** "Trihalomethane" means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

Subp. 23. **Turbidity unit.** "Turbidity unit" means an amount of turbidity equivalent to that in a solution composed of .000125 percent hydrazine sulfate and .00125 percent hexamethylenetetramine in distilled and filtered (100 μ pore size membrane) water, as measured by a nephelometric turbidimeter.

Subp. 24. **Variance.** "Variance" means a waiver which may be granted by the commissioner to a supply

A. which, due to the raw water quality reasonably available, cannot comply with a maximum contaminant level, despite application of the best known and available technology for treatment or other means; and

B. if granting the waiver will not result in an unreasonable risk to health.

Such a variance must be conditioned upon a schedule for implementation of control measures, and may specify an indefinite time period for compliance with the maximum contaminant level or required treatment.

Subp. 25. **Year round resident.** "Year round resident" means a person who resides in the area served by the public water supply for more than six months of the year.

Statutory Authority: *MS s 144.381 to 144.388*

4720.0200 JUSTIFICATION.

Parts 4720.0100 to 4720.3900 are adopted pursuant to legislative authority granted in Laws of Minnesota 1977, chapter 66, section 3, clause (e), which requires that the commissioner of health adopt for all public water supplies rules which are at least as stringent as the federal regulations dealing with public water supplies adopted by the United States Environmental Protection Agency, in order for the commissioner to be able to assume the primary responsibility for enforcing the federal act.

Statutory Authority: *MS s 144.381 to 144.388*

4720.0300 SCOPE AND COVERAGE.

Parts 4720.0100 to 4720.3900 prescribe standards for water supply siting and construction, set maximum contaminant levels for turbidity, microbiological constituents, organic and inorganic chemicals, and radioactivity, prescribe a frequency for monitoring the levels of these constituents and sodium and corrosivity, and prescribe the procedures for reporting results, notifying the public and for maintaining records.

The standards and procedures adopted in parts 4720.0100 to 4720.3900 inclusive shall apply to all public drinking water supplies, pursuant to authority granted by existing statutes and amendments thereto, notwithstanding any other water quality standards or regulations.

A water supply which meets all of the following requirements shall not be a public supply for the purpose of parts 4720.0100 to 4720.3900:

A. consists only of distribution and storage facilities;

B. obtains all of its water from, but is not owned or operated by a public water supply to which such regulations apply;

C. does not sell water to any person; and

D. is not a carrier which conveys passengers in intrastate commerce.

Statutory Authority: *MS s 144.381 to 144.388*

4720.0400 MAXIMUM CONTAMINANT LEVELS.

The levels in parts 4720.0500 to 4720.0900 shall be the enforceable maximum contaminant levels for all public water supplies in the state.

Statutory Authority: *MS s 144.381 to 144.388*

4720.0500 MAXIMUM LEVEL OF MICROBIOLOGICAL CONTAMINANTS.

Subpart 1. **Maximum contaminant levels.** The maximum contaminant levels for coliform bacteria, applicable to both community and noncommunity water supplies, are as follows in subparts 2 to 6.

Subp. 2. **Use of membrane filter.** When the membrane filter technique pursuant to part 4720.1200, subpart 1, item A is used, the number of coliform bacteria shall not exceed any of the following:

A. One per 100 milliliters as the arithmetic mean of all samples examined per compliance period pursuant to part 4720.1200, subpart 2 or 3, except that systems required to take ten or fewer samples per month may exclude one positive routine sample per month from the monthly calculation if:

(1) the commissioner determines and indicates in writing to the public water supply that no unreasonable risk to health existed, after having considered the following factors: the system provided and had maintained an active disinfectant residual in the distribution system; the potential for contamination as indicated by a sanitary survey; and the history of the water quality at the public water supply;

(2) the supplier initiates a check sample on each of two consecutive days from the same sampling point within 24 hours after notification that the routine sample is positive, and each of these check samples is negative; and

(3) the original positive routine sample is reported and recorded by the supplier pursuant to parts 4720.3600 and 4720.3700.

The supplier shall report to the commissioner its compliance with the conditions specified in this item and a summary of the corrective action taken to resolve the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purposes. This provision may be used only once during two consecutive compliance periods.

B. Four per 100 milliliters in more than one sample when less than 20 are examined per month; or

C. Four per 100 milliliters in more than five percent of the samples when 20 or more are examined per month.

Subp. 3. **Use of fermentation tube and ten-milliliter standard.** When the fermentation tube method and ten-milliliter standard portions pursuant to part 4720.1200, subpart 1, item B are used, coliform bacteria shall not be present in any of the following:

A. More than ten percent of the portions in any month pursuant to part 4720.1200, subpart 2 or 3, except that systems required to take ten or fewer samples per month may exclude one positive routine sample resulting in one or more positive tubes per month from the monthly calculation if:

(1) the commissioner determines that the supply maintains an active disinfectant residual in the distribution system, or the commissioner determines in writing to the public water system that no unreasonable risk to health existed under the circumstances;

(2) the supplier initiates a check sample on each of two consecutive days from the sampling point within 24 hours after notification that the routine sample is positive, and each of these check samples is negative; and

(3) the original positive routine sample is reported and recorded by the supplier pursuant to parts 4720.3600 and 4720.3700.

The supplier shall report to the commissioner its compliance with the conditions specified in item A and a summary of the action taken to resolve the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purposes. This provision may be used only once during two consecutive compliance periods.

B. Three or more portions in more than one sample when less than 20 samples are examined per month; or

C. Three or more portions in more than five percent of the samples when 20 or more samples are examined per month.

H "Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions," H. L. Krieger and S. Gold, EPA-R4-73-014, USEPA, Cincinnati, Ohio, May 1973.

I HASL Procedure Manual, edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, N.Y., 1973.

Subp. 2. **Detection limit of radioanalysis.** For the purpose of monitoring radioactivity concentrations in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96 σ where σ is the standard deviation of the net counting rate of the sample).

To determine compliance with part 4720.0900, subpart 2, item A the detection limit shall not exceed one pCi per liter. To determine compliance with part 4720.0900, subpart 2, item B, the detection limit shall not exceed three pCi per liter.

To determine compliance with part 4720.0900, subpart 3 the detection limits shall not exceed the concentrations listed in subpart 3.

Subp. 3. **Detection limits for man-made beta particle and photon emitters.**

Radionuclide	Detection Limit
Tritium	1,000 pCi per liter
Strontium-89	10 pCi per liter
Strontium-90	2 pCi per liter
Iodine-131	1 pCi per liter
Cesium-134	10 pCi per liter
Gross beta	4 pCi per liter
Other radionuclides	1/10 of the applicable limit

To judge compliance with the maximum contaminant levels listed in part 4720.0900, subparts 2 and 3, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2000 ALTERNATIVE ANALYTICAL TECHNIQUES.

With the written permission of the commissioner, an alternative analytical technique may be employed. An alternative technique shall be acceptable only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any maximum contaminant level. The use of the alternative analytical technique shall not decrease the frequency of monitoring required by these rules.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2100 APPROVED LABORATORIES.

For the purpose of determining compliance with parts 4720.1000 to 4720.1900, samples may be considered only if they have been analyzed by a laboratory approved by the commissioner, except that measurements for temperature, pH, turbidity, and free chlorine residual may be performed by any person acceptable to the commissioner.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2200 MONITORING CONSECUTIVE SYSTEMS.

When a public water supply provides water to one or more other public water supplies, the monitoring requirements imposed by parts 4720.1000 to 4720.1900 may be superseded by a special monitoring schedule prescribed by the commissioner. Such a special monitoring schedule may be imposed to the extent that the interconnection justifies treating them as a single supply for monitoring purposes, and is enforceable just as any other monitoring requirement imposed by these rules. Such a special monitoring schedule shall include an agreement which names the supply or supplies responsible for monitoring, reporting, giving public notice, and maintaining records.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2300 ADDITIONAL MONITORING REQUIREMENTS.

The commissioner may impose additional monitoring requirements if the results of a sanitary survey indicate that a public health risk may exist. The commissioner may impose a requirement for more frequent sampling if the analytical results of water tests show that a previously measured contaminant is approaching a maximum contaminant level as prescribed in parts 4720.0400 to 4720.0900.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2400 SPECIAL MONITORING FOR SODIUM.

Subpart 1. **Samples.** Community public water supplies shall collect and analyze one sample per treatment plant at the entry point of the distribution system for the determination of sodium concentration levels. Samples must be collected and analyzed annually for supplies utilizing surface water sources in whole or in part, and at least every three years for supplies utilizing solely groundwater sources. The minimum number of samples required to be taken by the supply shall be based on the number of treatment plants used by the supply, except that multiple wells drawing raw water from a single aquifer will be considered one treatment plant for determining the minimum number of samples.

Subp. 2. **Results.** The supplier of water shall report the results of the analyses for sodium within the first ten days of the month following the month in which the sample results were received or within the first ten days following the end of the required monitoring period as stipulated by the commissioner whichever of these is first. If more than annual sampling is required, the supplier shall report the average sodium concentration within ten days of the month following the month in which the analytical results of the last sample used for the annual average were received.

Subp. 3. **Analyses.** Analyses for sodium shall be performed by the flame photometric method in accordance with the procedures described in Standard Methods, Method 320A; or EPA Chemical, Method 273.1 or 273.2; or ASTM, Method D-1428-64A. See part 4720.1100 for complete title of reference sources.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2500 SPECIAL MONITORING FOR CORROSIVITY CHARACTERISTICS.

Subpart 1. **Samples.** Community public water supplies shall collect samples from a representative entry point to the water distribution system for the purpose of analysis to determine the corrosivity characteristics of the water.

The supplier shall collect for analysis for each treatment plant using surface water sources in whole or in part, one sample during midwinter and one sample during midsummer. The supplier of the water shall collect for analysis one sample per treatment plant for each treatment plant using ground water sources. The minimum number of samples required to be taken by the supply shall be based on the number of treatment plants used by the supply, except that multiple

wells drawing raw water from a single aquifer may be considered one treatment plant for determining the minimum number of samples.

Determination of the corrosivity characteristics of the water shall include measurement of pH, calcium hardness, alkalinity, temperature, total dissolved solids or total filterable residue, and calculation of the Langelier Index in accordance with subpart 3. The determination of corrosivity characteristics shall only include one round of sampling. One round of sampling consists of two samples per treatment plant for surface water and one sample per treatment plant for ground water sources.

Subp. 2. **Results.** The supplier of water shall report the results of the analyses for the corrosivity characteristics within the first ten days of the month following the month in which the sample results were received. If more frequent sampling is required the supplier can accumulate the data and report each value within ten days of the month following the month in which the analytical results of the last sample were received.

Subp. 3. **Analysis.** Analyses conducted to determine the corrosivity of the water shall be made in accordance to the methods described in items A to F. See part 4720.1100 for complete title of reference sources.

A. Langelier Index: Standard Methods, Method 203.

B. Total Filterable Residue: Standard Methods, Method 208B; or EPA Chemical, Method 160.1.

C. Temperature: Standard Methods, Method 212.

D. Calcium: Standard Methods, Method 306C; or ASTM, Method D-1126-67B.

E. Alkalinity: Standard Methods, Method 403; or ASTM, Method D-1067-70B; or EPA Chemical, Method 310.1.

F. pH: Standard Methods, Method 424; or EPA Chemical, Method 150.1; or ASTM, Method D-1293-78 A or B.

Subp. 4. **Report of construction materials in the distribution system.** Community water supplies shall identify whether the following construction materials are present in their distribution system and report to the commissioner the existence of any of the following materials:

A. lead from piping, solder, caulking, interior lining of distribution mains, alloys, and home plumbing;

B. copper from piping and alloys, service lines, and home plumbing;

C. galvanized piping, service lines, and home plumbing;

D. ferrous piping materials such as cast iron and steel;

E. asbestos cement pipe;

F. vinyl-lined asbestos cement pipe; or

G. coal tar lined pipes and tanks.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2600 VARIANCES.

Subpart 1. **General conditions.** The commissioner may grant one or more variances from a maximum contaminant level prescribed in parts 4720.0400 to 4720.0900 or from a treatment required by these rules, pursuant to authority granted in Laws of Minnesota 1977, chapter 66, section 3, clause (e), according to the procedure described in this part.

Subp. 2. **Request for variance.** A supplier may request a variance whenever he determines that his supply is exceeding or will exceed a maximum contaminant level. A supplier who has not requested a variance or has not taken corrective action to bring his supply into compliance by the date specified in the notification of violation shall be subject to the penalties of Laws of Minnesota 1977, chapter 66, section 3, clause (e).

Subp. 3. **Matters to be considered.** In deciding whether to grant a variance from a maximum contaminant level, the commissioner shall consider: the availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and cost and other economic considerations such as implementing treatment, improving the quality of the source water or using an alternative source.

Subp. 4. **Specific conditions for variance.** The commissioner may grant a variance from a maximum contaminant level upon finding that:

A. because of the characteristics of the raw water sources which are reasonably available to the supply, the supply cannot meet the requirements respecting the maximum contaminant levels prescribed in parts 4720.0400 to 4720.0900 despite the application of the best known and economically feasible technology for treatment or other means; and

B. the variance will not result in an unreasonable risk to health.

The commissioner may grant a variance from any required treatment upon finding that the supply has demonstrated that such treatment is not necessary to meet a maximum contaminant level or to protect the health of persons, because of the nature of the raw water source of the supply.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2700 APPLICATION PROCEDURE FOR VARIANCE.

A request for a variance shall be submitted to the commissioner in writing and shall contain the following information:

A. The nature and duration of the variance being requested.

B. Relevant analytical results of water quality sampling of the supply, including results of relevant tests conducted pursuant to the requirements of parts 4720.0100 to 4720.3900.

C. For any request for a variance from a maximum contaminant level, the notice shall also contain:

(1) An explanation in full and evidence of the best available treatment.

(2) Economic and legal factors relevant to the ability to comply.

(3) Analytical results of raw water quality relevant to the variance request.

(4) A proposed compliance schedule, including the date each step toward compliance will be achieved. Such a schedule shall include as a minimum the following dates:

(a) a date by which arrangement for alternative raw water source or improvement of existing raw water source will be completed;

(b) a date for initiation of the connection of the alternative raw water source or improvement of existing raw water source; and

(c) a date by which final compliance is to be achieved.

(5) A plan for the provision of safe drinking water in the case of an excessive rise in the contaminant level for which the variance is requested.

(6) A plan for interim control measures during the effective period of variance.

D. For any request for a variance from a required treatment, the notice shall include a statement that the supply will perform monitoring and other reasonable requirements prescribed by the commissioner as a condition to the variance.

E. Such other information as the commissioner may require.

F. Any information which the supplier believes is pertinent to the request.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2800 DISPOSITION OF A REQUEST FOR A VARIANCE.

Upon receipt of an application for a variance the commissioner shall initiate, within 90 days, the procedure for a contested case. Notice and opportunity for hearing shall be given according to Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings.

The commissioner shall within one year after the variance is granted, impose a schedule for compliance with parts 4720.0100 to 4720.3900, after notice and opportunity for hearing have been given.

Statutory Authority: *MS s 144.381 to 144.388*

4720.2900 TERMINATION OF A VARIANCE.

A variance from a maximum contaminant level may be terminated by the commissioner when the supply comes into compliance with the applicable rule, and may be terminated by the commissioner upon a finding that the supply has failed to comply with any requirement of a final schedule imposed by the commissioner pursuant to these rules.

A variance from a required treatment may be terminated at any time upon a finding by the commissioner that the nature of the raw water source is such that the required treatment for which the variance was granted is necessary to protect the health of persons, or upon a finding by the commissioner that the supply has failed to comply with monitoring and other requirements prescribed as a condition to the granting of the variance.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3000 COMPLIANCE WITH VARIANCE.

A compliance schedule imposed by the commissioner pursuant to the grant of a variance shall be enforceable as if it were a rule of the commissioner.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3100 EXEMPTIONS.

The commissioner may grant one or more exemptions from a maximum contaminant level prescribed in parts 4720.0400 to 4720.0900 or from a treatment required by these rules, pursuant to authority granted in Laws of Minnesota 1977, chapter 66, section 3, clause (e), according to the procedure described below.

A supplier may request an exemption whenever he determines that his supply is exceeding or will exceed a maximum contaminant level. A supplier who has not requested an exemption or has not taken corrective action to bring his supply into compliance by the date specified in the notification of violation shall be subject to the penalties of Laws of Minnesota 1977, chapter 66, section 3, clause (e).

The commissioner may grant an exemption from a maximum contaminant level or from a required treatment:

A. after having considered the following: construction, installation, or modification of treatment equipment or systems; the time needed to put into operation a new treatment facility to replace an existing supply which is not in compliance; economic feasibility of compliance; and

B. upon finding that, due to compelling factors (which may include economic factors), the supply is unable to comply with such contaminant level or required treatment; the supply was in operation on the date on which such contaminant level or required treatment went into effect; and the granting of the exemption will not result in an unreasonable risk to health.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3200 APPLICATION PROCEDURE FOR EXEMPTION.

A request for an exemption shall be submitted to the commissioner in writing and shall contain the following information:

A. the nature and duration of the exemption being requested;

B. relevant analytical results of water quality sampling of the supply, including results of relevant tests conducted pursuant to the requirements of parts 4720.0100 to 4720.3900.

C. an explanation of the compelling factors such as time or economic factors which prevent the supply from complying with a maximum contaminant level or required treatment on the effective date of the applicable standard;

D. a proposed compliance schedule, including the date when each step toward compliance will be achieved;

E. such other information as the commissioner may require; and

F. any other information which the applicant believes is pertinent to the request.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3300 DISPOSITION OF A REQUEST FOR AN EXEMPTION.

Upon receipt of an application for an exemption the commissioner shall state within 90 days, the procedure for a contested case. Notice and opportunity for hearing shall be given according to Minnesota Statutes, chapter [illegible] and the rules of the Office of Administrative Hearings.

The commissioner shall within one year after the exemption is granted, impose a schedule for compliance with parts 4720.0100 to 4720.3900 after notice and opportunity for hearing have been given.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3400 TERMINATION OF AN EXEMPTION.

An exemption may be terminated by the commissioner when the supply comes into compliance with the applicable rule, and may be terminated by the commissioner of health upon a finding by the commissioner that the supply has failed to comply with any requirement of a final schedule imposed pursuant to parts 4720.0100 to 4720.3900.

Statutory Authority: *MS s 144.381 to 144.388*

History: *L 1977 c 305 s 39*

4720.3500 COMPLIANCE WITH EXEMPTION.

Any compliance schedule issued pursuant to an exemption shall require compliance with parts 4720.0100 to 4720.3900 before January 1, 1981. Compliance with the requirements of revised federal regulations will have to be achieved within seven years of the date on which such federal regulations become effective.

If the supply which seeks the exemption has entered into an enforceable agreement to become a part of a regional system, as determined by the commissioner, the compliance schedule shall require compliance by the supply with each maximum contaminant level or required treatment prescribed by parts 4720.0100 to 4720.3900 before January 1, 1983. For such a supply (which will become part of a regional system) compliance with the requirements of the revised federal regulations shall be required within nine years of the effective date of the revised federal regulations.

A compliance schedule imposed by the commissioner pursuant to the grant of an exemption shall be enforceable as if it were a rule of the commissioner.

Statutory Authority: *MS s 144.381 to 144.388*

RECORD MAINTENANCE; REPORTING; PUBLIC NOTIFICATION

4720.3600 RECORD MAINTENANCE.

Subpart 1. **Records to be maintained.** Any owner or operator of a public water supply shall retain on its premises or at a convenient location near the premises, and shall make available for public inspection, the following records for the specified period of time:

A. Records of bacteriological analyses and turbidity measurements made pursuant to parts 4720.1200 and 4720.1300 shall be kept for not less than five years.

B. Records of chemical analyses made pursuant to parts 4720.1400 to 4720.1900 shall be kept for not less than ten years.

Subp. 2. **Laboratory reports.** Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

A. the date, place, and time of sampling, and the name of the person who collected the sample;

B. identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample;

C. date of analysis;

D. laboratory and person responsible for performing analysis;

E. the analytical technique or method used; and

F. the results of the analysis.

Subp. 3. **Records of actions.** Records of action taken by the supply to correct violations of rules dealing with public water supplies shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

Subp. 4. **Copies of reports.** Copies of any written reports, summaries, or communications relating to sanitary surveys of the supply conducted by the supply itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period of not less than ten years after completion of the sanitary survey involved.

Subp. 5. **Records of variance or exceptions.** Records concerning a variance or exemption granted to the supply shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3700 REPORTING REQUIREMENTS.

Subpart 1. **Results of analysis on sample.** All the results of analyses performed on samples which are to be tested pursuant to these rules shall be reported as follows:

A. The approved laboratory shall submit all analytical results on reporting forms to be prescribed by the commissioner. These forms shall be prepared in triplicate, with one copy being sent to the supplier, one copy being sent to the state Department of Health, Division of Environmental Health, Section of Public Water Supplies, and the third being retained by the laboratory.

B. Results of turbidity and chlorine residual measurements shall be submitted by the supplier on the prescribed reporting forms.

Subp. 2. **Reporting forms.** Except when a shorter reporting period is specified, all results of tests, analyses, or measurements shall be submitted on prescribed reporting forms to the commissioner within the time period specified in item A or B, whichever is shorter:

A. the first ten days following the month in which the result is received by the supplier; or

B. the first ten days following the end of the required monitoring

Subp. 3. **Reporting positive test results.** A laboratory performing microbiological analyses pursuant to parts 4720.0100 to 4720.3900 shall report to the supplier and to the commissioner any positive test results within 24 hours of the time the positive result becomes available.

The supplier shall report to the commissioner a positive bacteriological test result within 24 hours of the time the supplier learns of such a result.

Subp. 4. **Reporting failure to comply with rules.** The supplier of water shall report to the commissioner within 48 hours the failure to comply with any of the rules relating to public water supplies, including the failure to comply with a monitoring requirement, as set forth in parts 4720.1000 to 4720.2500.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3800 RIGHT OF INSPECTION.

The commissioner, or one of its authorized representatives, upon presenting appropriate credentials to any water supplier, is authorized to enter and inspect any establishment, facility, or other property of such supplier, in order to determine whether such supplier has acted or is acting in compliance with the rules of the commissioner relating to water supplies, including for this purpose the inspection of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water supply, including its raw water source.

Statutory Authority: *MS s 144.381 to 144.388*

4720.3900 PUBLIC NOTIFICATION.

Subpart 1. **Notification required.** Public notification must be made by a supplier of water whenever a public water supply:

A. fails to comply with a maximum contaminant level prescribed in parts 4720.0400 to 4720.0900;

B. fails to comply with a prescribed monitoring schedule pursuant to parts 4720.1000 to 4720.2500;

C. fails to submit timely reports pursuant to part 4720.3700;

D. is granted a variance or exemption from a maximum contaminant level pursuant to parts 4720.2600 to 4720.3500;

E. fails to comply with a schedule prescribed pursuant to such a variance or exemptions; or

F. fails to comply with an applicable testing method established in parts 4720.1000 to 4720.2500.

Subp. 2. **Form of notice.** A notice given pursuant to this part shall be written in a manner reasonably designed to inform fully the user of the supply. The notice shall be conspicuous and shall not use unduly technical language, unduly small print, or other methods which would frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject including the nature of the problem and, where appropriate, a clear statement that a rule dealing with public water supplies has been violated, and shall also disclose any preventive measures that should be taken by the public. Where appropriate, or where required by the commissioner, bilingual notice shall be given. Notices may include a reasonable explanation of the subject of the notice and of its significance or seriousness to the public health, a fair explanation of steps taken by the supply to correct any problem, and the results of any additional sampling.

Subp. 3. **Notice by community water supply.** In the case of a community water supply, the supplier shall give notification as referred to in subparts 1 and 2:

A. By including a notice in the first set of water bills issued after any of the conditions described in subpart 1 occurs.

B. If the supply issues bills less frequently than every three months, or does not issue water bills, the supplier must give notice by direct mail to every residence served, within six weeks after the condition which gave rise to the need for such notice has occurred.

C. In addition, a copy of every notice mailed pursuant to this part shall be sent to the commissioner, as part of the same mailing which is made to the supply's customers.

In the case of a failure to comply with a maximum contaminant level, such written notice shall be repeated according to the procedure prescribed in subpart 3 not less than once every three months after the initial notice. Such continuing notice must be given as long as the failure to comply continues, whether or not the supply has a variance or exemption relating to the maximum contaminant level which is being exceeded.

In the case of a failure to comply with a maximum contaminant level which is not corrected promptly after discovery, the supplier must give other general public notice of the failure, in addition to the notice by direct mail, in a manner to be prescribed by the commissioner. Such additional notice may include announcements to communications media in the area served by the supply.

Subp. 4. **Notice by noncommunity water supply.** In the case of noncommunity supply, the supplier must give notice by conspicuous posting. Notice must be posted at or near every tap or drinking fountain, or wherever the public can draw the water. If the water is served to the consumer, then additional notice must be posted on the menu, or registration form, or in some other obvious location to assure adequate readability of the notice, before the water is consumed. The commissioner shall order the form and location for the posting of such notice. Such notice must remain posted as long as any one of the conditions cited in subpart 1 continues to exist.

Subp. 5. **Commissioner determines imminent risk to public health.** Whenever the commissioner determines that a supply is providing water which, if consumed, might create an imminent risk to the public health, the commissioner may order the supplier to give a notice or warning of such risk in a prescribed manner.

Subp. 6. **Commissioner's notice not to relieve supplier of responsibility.** The commissioner may issue any notice or warning required by this part on behalf of a supplier, but a supplier is not relieved of any responsibility to issue any notice or warning under this part, unless he has been specifically relieved of the responsibility by the commissioner, in writing.

Statutory Authority: *MS s 144.381 to 144.388*

WATER HAULERS

4720.4000 PURPOSE.

Parts 4720.4000 to 4720.4600 are adopted for the purpose of assuring that sanitary procedures are followed by those who distribute drinking water by tank truck and that the public health is thereby preserved. The authority for adopting parts 4720.4000 to 4720.4600 may be found in Minnesota Statutes 1976, section 144.12, subdivision 1, clause (5) as amended by Laws of Minnesota 1977, chapter 66, section 10 which states that the commissioner of health may regulate the "distribution of water by persons."

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4100 DEFINITIONS.

Subpart 1. **Accessible.** "Accessible" means capable of being exposed for cleaning and inspection.

Subp. 2. **Approved source.** "Approved source" means a public water supply which is in compliance with state rules relating to water supplies, and is equipped with a permanent overhead delivery system designed to prevent the introduction of biological or chemical contaminants.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of health or his or her authorized representative.

Subp. 4. **Corrosion-resistant.** "Corrosion-resistant" means capable of maintaining original surface characteristics under the prolonged influence of the use environment, including the expected water contact and normal use of cleaning compounds and sanitizing solutions.

Subp. 5. **Easily cleanable.** "Easily cleanable" means readily accessible, and of such material and finish and so fabricated that cleaning can be accomplished by hand scrubbing.

Subp. 6. **Sanitize.** "Sanitize" means the bactericidal treatment of the interior surfaces of the tank by a process which has proven effective and does not leave a toxic residue.

Subp. 7. **Smooth.** "Smooth" means a surface free of pits and inclusions.

Subp. 8. **Toxic.** "Toxic" means having an adverse physiological effect on man.

Subp. 9. **Water hauler.** "Water hauler" or "hauler" means a person engaged in bulk vehicular transportation of water to other than the hauler's household, which is intended for use or used for drinking or domestic purposes.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4200 WATER HAULER.

A water hauler shall be free of any infectious or communicable disease.

The water hauler shall consult with regional district personnel of the Minnesota Department of Health before implementing any questionable procedures.

Dipping into the filled tank is prohibited.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4300 TANK REQUIREMENTS.

The tank shall be constructed of stainless steel or be lined with glass or other acceptable, corrosion resistant and nontoxic material, with rounded corners and a smooth surface so that the interior may be thoroughly cleaned and sanitized.

The system shall be completely closed except for vents which are properly constructed and screened.

Caps on inlets and outlets shall be hinged or chained to provide a permanent attachment.

The inlets and outlets shall be easy to clean and so located and protected as to minimize the hazard of contamination.

Filters shall not be used.

The tank shall be filled only from the top.

The outlet hose from the tank shall be maintained in a sanitary condition at all times, shall be flushed clean prior to every delivery, and shall not impart any taste or odor to the water.

The tank shall be accessible internally, for proper cleaning, disinfection, and inspection.

The tank shall never have been used to haul any materials which might have a deleterious effect on health or on the quality of the water being transported. If the tank has been used for transporting any materials other than water, the hauler shall obtain the approval of the commissioner before using the tank to haul water for drinking or domestic use.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4400 CLEANING AND DISINFECTION.

The tank and all fittings shall be cleaned and sanitized according to the following procedures before they can be used to haul water, and thereafter once per week: the tank shall be cleaned by scrubbing manually with brushes and noncorrosive detergents, or by automation using a spray ball within the tank which provides cleaning solution with sufficient velocity to remove all soil from the tank interior; the tank and fittings shall then be rinsed.

The tank and fittings shall be sanitized by any of the following methods:

A. filling with water from an approved source to which 50 parts per million chlorine has been added, mixing and allowing it to stand for three to four hours; or 100 parts per million chlorine for not less than 20 minutes; or

B. the commissioner may approve the use of an alternate sanitizing method if the supplier can show that the use of the alternate method assures a level of biocidal activity comparable to that provided by the use of chlorine.

The tank may be cleaned and sanitized in a single step by using a commercial detergent-sanitizer according to the manufacturer's directions.

After sanitizing, the tank shall be drained, and the tank and fittings shall be rinsed with water from an approved source.

The sanitized tank shall be filled with water from an approved source.

The hauler shall add sufficient chlorine to assure that there is one part per million free chlorine residual when the last remaining quantity of water is delivered to a user. The hauler shall test the chlorine residual in each tankful of water using the DPD method.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4500 TESTING.

Once each month the hauler shall collect a sample of water from each tank and shall submit the water sample to the state Department of Health laboratory for a bacteriological analysis. Sample collecting bottles for this purpose may be obtained from any Minnesota Department of Health regional district office or by writing to the Minnesota Department of Health, Section of Analytical Services, 717 Delaware Street SE, Minneapolis, Minnesota 55440.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.4600 RECORDS.

The hauler shall retain a written log for each tank and shall record therein:

A. the date when the tank is sanitized;

B. the date on which the tank is filled and the name of the approved source from which the water is obtained;

C. the chlorine residual and date on which it is measured;

D. date on which water samples are sent for analysis; and

E. customer's name, address, date, and quantity delivered.

Statutory Authority: *MS s 144.12 subd 1; 144.381 to 144.388*

4720.5000 LABORATORY ANALYSIS FEES.

Subpart 1. **Fees set by commissioner.** The commissioner shall set fees for analysis of water samples by the department's environmental health laboratory.

MINNESOTA RULES

CHAPTER 4725, WATER WELL CONSTRUCTION CODE

CHAPTER 4725
DEPARTMENT OF HEALTH
WATER WELL CONSTRUCTION CODE

4725.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of these rules promulgated pursuant to Minnesota Statutes, chapter 156A, as amended, the terms defined in this part have the meanings given them, except where the context clearly indicates otherwise.

Subp. 2. **Scope of subparts 3 to 15.** The following terms apply primarily to the licensing rules, parts 4725.0500 to 4725.1800, but are also applicable to the Water Well Construction Code, parts 4725.1900 to 4725.7600 when used therein.

Subp. 3. **Act.** "Act" means Minnesota Statutes, sections 156A.01 to 156A.08, as amended, under which these rules are promulgated.

Subp. 4. **APA.** "APA" means the Administrative Procedure Act, Minnesota Statutes, chapter 14.

Subp. 5. **Applicant.** "Applicant" means any person who applies for a water well contractor's license pursuant to the act.

Subp. 6. **Application for examination.** "Application for examination" means the application submitted by an applicant from which the commissioner determines whether the applicant is eligible to take the examination.

Subp. 7. **Application for licensure.** "Application for licensure" means the application submitted by an applicant upon his successful completion of the examination, or at the end of each calendar year for licensure renewal.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of health or his or her authorized representative.

Subp. 9. **Council.** "Council" means the Water Well Contractors, and Exploratory Borers, Advisory Council created pursuant to the provisions of Minnesota Statutes, section 156A.06.

Subp. 10. **Licensee.** "Licensee" means a person who is licensed as a water well contractor pursuant to the provisions of the act and these rules.

Subp. 11. **Person.** "Person" means any natural person, corporation, partnership, or other business association.

Subp. 12. **Representative.** "Representative" means an individual who is in charge of the water well drilling and contracting operation and qualifies for licensure on behalf of a partnership, corporation, or other business association rather than on his own behalf.

Subp. 13. **Upper termination of the well casing.** "Upper termination of the well casing" means a point 12 inches above the established ground surface.

Subp. 14. **A water well drilling machine.** "A water well drilling machine" means any machine or device such as a cable tool, hollow rod, or auger used for construction of a water well including drive point wells or a hoist or machine used in the well repair service which involves the modification to the well casing, screen, depth, or diameter below the upper termination of the well casing.

Subp. 15. **Year of experience.** "Year of experience" for a water well contractor means a year during which the applicant personally drilled five water wells and was actively working in the trade for a period of 1,000 hours under the supervision of a licensed water well contractor. An applicant drilling 1,000 hours per year and completing fewer than five wells per year may qualify, if the experience is gained in constructing one or more large diameter wells (casing outer diameter is ten inches or more) which are more than 500 feet deep. An applicant who seeks to qualify under this provision shall have his license limited to construction of such deep and large diameter wells. Supervision of a drilling operation shall not be considered as an equivalent to personally drilling a well. The experience must have been gained in Minnesota except that an applicant may provide the commissioner with information demonstrating that his experience was gained in an area with the same or similar geological and other well drilling conditions as in the applicant's proposed well drilling operations territory in Minnesota. Such experience may be considered as meeting the experience requirement of these rules. Applicants from states having no standards or licensing programs, or standards less strict than those adopted pursuant to Minnesota Statutes, chapter 156A shall have obtained at least one year of experience in Minnesota under the supervision of a licensed water well contractor, in addition to that which is required under parts 4725.0500 to 4725.1800.

Subp. 16. **Application of subparts 17 to 54.** The following terms apply to the Water Well Construction Code, parts 4725.1900 to 4725.7600.

Subp. 17. **Abandoned water well.** "Abandoned water well" means a well whose use has been permanently discontinued, or which is in such disrepair that its continued use for the purpose of obtaining groundwater is impracticable or may be a health hazard.

Subp. 18. **Administrative authority.** "Administrative authority" means the commissioner. When this code, parts 4725.1900 to 4725.7600, is adopted by any municipality of the state, such municipality may apply to the commissioner for authorization to act as an inspection agent of the administrative authority to enforce the provisions of the act and these rules.

The inspection agent's authority shall be limited to inspections to determine compliance with the provisions of these rules and to exercise any other powers specifically given the administrative authority by these rules. The commissioner may grant such authority if the municipality demonstrates that at least one of its employees is qualified and familiar with the well drilling operations in that municipality. Such authorization may be revoked without cause by the commissioner or released by the municipality on ten days' written notice. This subpart shall not preclude the commissioner or any municipality from reaching an agreement authorized by Minnesota Statutes, section 471.59.

Subp. 19. **Annular space.** "Annular space" means the space between two cylindrical objects one of which surrounds the other, such as the space between a drillhole and a casing pipe, or between a casing pipe and liner pipe.

Subp. 20. **Approved basement.** "Approved basement" means a private home basement with walls and floor constructed of concrete or equivalent which is not subject to flooding and not located within a floodplain.

Subp. 21. **Aquifer.** "Aquifer" means a water-bearing formation (soil or rock horizon) that transmits water in sufficient quantities to supply a well.

Subp. 22. **Casing.** "Casing" means an impervious durable pipe placed in a well to prevent the walls from caving and to seal off surface drainage or undesirable water, gas, or other fluids to prevent their entering the well and includes specifically but not limited to:

A. "Temporary casing" means a temporary casing placed in soft, sandy, or caving surface formation to prevent the hole from caving during drilling.

B. "Protective casing" means the permanent casing of the well.

Subp. 23. **Cesspool.** "Cesspool" means an underground pit into which raw household sewage or other untreated liquid waste is discharged and from which the liquid seeps into the surrounding soil or is otherwise removed.

Subp. 24. **Coliform group.** "Coliform group" means all of the aerobic and facultative anaerobic, gram-negative, non-spore-forming, rod-shaped bacteria which ferment lactose with gas formation within 48 hours at 35 degrees centigrade.

Subp. 24a. **Confining bed.** "Confining bed" means a layer or body of soil, sediment, or rock with low vertical permeability relative to the aquifers or beds above or below it.

Subp. 25. **Director.** "Director" means the director of the Division of Environmental Health of the department, or his authorized representative, who shall carry out the administrative functions of these rules on behalf of the commissioner.

Subp. 26. **Drawdown.** "Drawdown" means the extent of lowering of the water surface in a well and aquifer resulting from the discharge of water from the well.

Subp. 27. **Dug well.** "Dug well" means a well in which the side walls may be supported by material other than standard weight steel casing. Water enters a dug well through the side walls and bottom.

Subp. 28. **Established ground surface.** "Established ground surface" means the intended or actual finished grade (elevation) of the surface of the ground at the site of the well.

Subp. 29. **Geological material.** "Geological material" means all materials penetrated in drilling a well.

A. The following table lists materials other than consolidated rock classified according to average particle size (Wentworth 1922).

Material	Particle Diameters		Screen Slot No.	
	Millimeters	Inches	From	To
Clay	Up to 0.005	Up to 0.0002	-	-
Silt	0.005-0.062	0.0002-0.0025	-	-
Fine Sand	0.062-0.250	0.0025-0.010	2	10
Medium Sand	0.250-0.50	0.010-0.020	10	20
Coarse Sand	0.50-1.00	0.020-0.040	20	40
Very Coarse Sand	1.00-2.00	0.040-0.080	40	80
Fine Gravel	2.00-4.00	0.080-0.160	80	160
Coarse Gravel	4.00-62.5	0.160-2.50	160 and larger	
Cobbles	62.5-250.0	2.50-10.0	-	-
Boulders	250.0 and larger	10.0 and larger		

B. "Alluvium" is a general term for clay, silt, sand, gravel, or similar unconsolidated material deposited during comparative recent geologic time by a stream or other body of running water as a sorted or semisorted sediment.

C. "Glacial drift (unconsolidated)" means a general term applied to all rock material (clay, sand, gravel, and boulders) transported by a glacier and deposited directly by or from the ice or by running water emanating from the glacier.

D. "Glacial outwash" means a stratified sand and gravel removed or washed out from a glacier by meltwater streams and deposited in front of or beyond the terminal moraine or the margin of an active glacier.

E. "Hardpan" is a term to be avoided if possible, but when used means a hard impervious layer composed chiefly of clay, cemented by relatively insoluble materials, which does not become plastic when mixed with water and definitely limits the downward movement of water and roots.

F. "Shale" means rock consisting of hardened silts and clays.

G. "Sandstone" means cemented or otherwise compacted sediment composed predominately of sand.

H. "Limestone" means rock which contains at least 80 percent of carbonates of calcium and has strong reaction with HCl (muriatic acid).

I. "Dolomite" means rock which contains at least 80 percent of carbonates of magnesium and has a weak reaction with HCl (muriatic acid).

J. "Gypsum" means a soft light colored formation of calcium sulfate crystals and may be found as streaks in a shale formation.

Subp. 30. **Grout.** "Grout" means neat cement, concrete, heavy drilling mud, or heavy bentonite water slurry. Heavy drilling mud or heavy bentonite water slurry when used as grout shall be of sufficient viscosity to require a time of at least 70 seconds to discharge one quart of the material through an API (American Petroleum Institute) marsh funnel viscometer.

Subp. 30a. **Monitoring well.** "Monitoring well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of extracting groundwater for physical, chemical, or biological testing. "Monitoring well" includes "groundwater quality sampling well" as that phrase is used in Minnesota Statutes, section 156A.03, subdivision 3.

Subp. 31. **Municipality.** "Municipality" means a city, village, township, borough, county, district, or other political subdivision of the state created by or pursuant to state law or any combination of such units acting cooperatively or jointly.

Subp. 32. **Pitless adapter.** "Pitless adapter" means a device for above or below ground discharge designed for attachment to one or more openings through a well casing, and constructed so as to prevent the entrance of contaminants into the well.

Subp. 33. **Pitless unit.** "Pitless unit" means an assembly with cap which extends the upper end of the well casing to above grade, and constructed so as to prevent the entrance of contaminants into the well.

Subp. 34. **Pollution or contamination.** "Pollution" or "contamination" means the presence or addition of any substance to water which is or may become injurious to the health, safety, or welfare of the general public or private individuals using the well; which is or may become injurious to domestic, commercial, industrial, agricultural, or other uses which are being made of such water.

Subp. 35. **Potable water.** "Potable water" means water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

Subp. 36. **Pressure tank or hydropneumatic tank.** "Pressure tank" or "hydropneumatic tank" means a closed water storage container constructed to operate under a designed pressure rating to modulate the water system pressure within a selected pressure range.

Subp. 37. **Priming.** "Priming" means the first filling of a pump with water and the action of starting the flow in a pump.

Subp. 38. **Pump house.** "Pump house" means a building constructed over a well exclusively to protect the well, pump, and water treatment equipment.

Subp. 39. **Pump room or well room.** "Pump room" or "well room" means an enclosed structure, either above or in a below grade approved basement housing the pump, top of the well, a suction line or any combination thereof.

Subp. 40. **Pumping water level.** "Pumping water level" means the distance measured from the established ground surface to the water surface in a well being pumped at a specified rate for a specified period of time.

Subp. 41. **Pumps and pumping equipment.** "Pumps and pumping equipment" means materials used or intended for use in withdrawing or obtaining groundwater for any use, including without limitation, seals and other safeguards to protect the water from pollution and together with fittings, and controls to provide sanitary water storage facilities. "Installation of pumps and pumping equipment" means the selection of, and procedure employed in the placement and preparation for operation of, pumps and pumping equipment, including construction involved in making entrance to the well and establishing proper seals and other safeguards to protect groundwater from pollution, including repairs to existing installations.

Subp. 42. **Sewage.** "Sewage" means the water carried waste products from residences, public buildings, including the excrementious or other discharges from the bodies of human beings or animals together with such groundwater infiltration and surface water as may be present.

Subp. 43. **Seepage pit or dry well.** "Seepage pit" or "dry well" means an underground pit into which a septic tank discharges household sewage or other liquid waste and from which the liquid seeps into the surrounding soil through the bottom and openings in the side of the pit.

Subp. 44. **Septic tank.** "Septic tank" means a watertight tank of durable materials through which sewage flows very slowly and in which solids separate from the liquid to be decomposed or broken down by bacterial action.

Subp. 45. **Sewer.** "Sewer" means a pipe or conduit carrying sewage or into which sewage may back up.

Subp. 46. **Subsurface disposal field, seepage bed, drainfield, percolation system, or tile absorption field.** "Subsurface disposal field," "seepage bed," "drainfield," "percolation system," or "tile absorption field" means a system composed of open jointed tile lines buried in stones and shallow trenches or beds for final disposal into the ground of sewage effluent from a septic tank. The septic tank effluent is applied to land by distribution beneath the surface through the open jointed lines.

Subp. 47. **Static water level.** "Static water level" means the distance measured from the established ground surface to the water surface in a well neither being pumped, nor under the influence of pumping nor flowing under artesian pressure.

Subp. 48. **Subterranean gas.** "Subterranean gas" means a gas occurring below the land surface. It may be flammable such as methane or highly toxic as hydrogen sulfide and may be associated with ground water.

Subp. 49. **Suction line.** "Suction line" means a pipe or line connected to the inlet side of a pump or pumping equipment or any connection to a well casing that may conduct nonsystem water into the well because of negative pressures.

Subp. 50. **Water varieties.** "Water varieties" mean:

A. "Groundwater" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water. The water that supplies springs and wells is groundwater.

B. "Near surface water" means water in the zone immediately below the ground surface. It may include seepage from barnyards, disposal beds or leakage from sewers, drains, and similar sources of pollution.

C. "Surface water" means water that rests or flows on the surface of the ground.

Subp. 51. **Well.** "Well" means water well as defined in Minnesota Statutes, section 156A.02, subdivision 1.

Subp. 52. **Well seal.** "Well seal" means a device or method used to protect a well casing or water system from the entrance of any external pollutant at the point of entrance into the casing of a pipe, electric conduit, or water level measuring device.

Subp. 53. **Well vent.** "Well vent" means an outlet at the upper terminal of a well casing to allow equalization of air pressure in the well and escape of toxic or flammable gases when present.

Subp. 54. **Yield or production.** "Yield" or "production" means the quantity of water per unit of time which may flow or be pumped from a well under specified conditions.

Statutory Authority: *MS s 156A.01 to 156A.08*

History: *8 SR 1625*

4725.0200 APPLICATION TO ALL WATER WELLS.

These rules shall apply to all water wells in the state of Minnesota except those specifically exempted by the act. Those aspects covered are the construction of new wells, the repair and maintenance of wells where specified, the proper abandonment of wells, and the proper isolation of possible sources of contamination from existing wells to protect the quality of ground water aquifers for providing safe drinking water supplies.

Statutory Authority: *MS s 156A.01 to 156A.08*

4725.0300 PUBLIC WATER SUPPLY.

In accordance with part 4720.0010, no system of water supply, where such system is for public use, shall be installed by any public agency or by any person or corporation, nor shall any such existing system be materially altered or extended, until complete plans and specifications for the installation, alteration, or extension, together with such information as the commissioner may require shall have been submitted in duplicate and approved by the director insofar as any features thereof affect or tend to affect the public health. No construction shall take place except in accordance with the approved plans. The plans for the well shall conform as specified by this well code. No municipal well may be drilled without approval of the site by the director.

Statutory Authority: *MS s 144.08; 144.12 subd 1; 144.381 to 144.388*

4725.0400 MODIFICATION BY THE COMMISSIONER.

When the strict applicability of any provision of these rules presents practical difficulties or unusual hardships, the commissioner, in a specific instance, may modify the application of such provisions consistent with the general purpose of these rules and the act and upon such conditions as are necessary, in the opinion of the commissioner, to protect the groundwater of the state and the health, safety, and general well-being of persons using or potential users of the groundwater supply.

Any request for modification shall be submitted to the administrative authority in writing and shall be signed by both the owner and the licensee. In addition any persons involved in providing documentary evidence in support of the request shall sign the request submitted by the owner. Such request shall specify in detail the nature of the modification being sought, the reasons therefor, and the special precautions to be taken to avoid contamination of the well. The request shall also include: the proposed well depth, casing type and depth, method of construction and grouting, geological conditions likely to be encountered, and location of the well and of possible sources of contamination. Whether or not the requests are granted, the commissioner shall state in detail the reasons for the decision.

The owner of a water well is bound by all the provisions of parts 4725.0100 to 4725.7600 which relate to location, construction, maintenance, and abandonment of wells.

Statutory Authority: *MS s 156A.01 to 156A.08*

LICENSING

4725.0500 QUALIFICATIONS.

All applicants shall meet the following requirements:

A. a minimum of three years experience in water well drilling;

B. honesty, integrity, and an ability to perform the work of a water well drilling contractor; and

C. submission to the commissioner of properly completed applications.

the well shall submit the results of any yield tests which may be performed along with the well log.

F. For monitoring wells where the use of chlorine disinfectants will interfere with the intended water quality analyses, alternate disinfection methods or materials may be used if they are approved by the commissioner.

G. A monitoring well is exempt from the venting requirement in part 4725.6300.

H. The inside casing diameter for a monitoring well must be at least 1-1/2 inches, except that a driven well point may be equipped with a casing at least 1-1/4 inches in diameter.

Subp. 5. **Protective measures.** Protective measures are as follows:

A. Every monitoring well must be closed by use of an overlapping, locked metal cap or a wrench-tightened, threaded metal cap. The metal cap must be equivalent to the casing in strength and weight.

B. A monitoring well must be protected from damage by whichever of the methods in subitems (1) to (3) is most appropriate for the existing and anticipated site conditions.

(1) Protection may be by the placement of three posts of at least four-inch diameter, around the well at equal distances from each other and two feet from the casing. The posts must extend four feet above the ground surface and must be installed to a depth of four feet into solid ground or to a depth of two feet if each post is surrounded with six inches of concrete to a depth of two feet. The posts may be made of any of the following materals: schedule 40 steel pipe, if capped with an overlapping, threaded, or welded steel or iron cap, or filled with concrete; reinforced concrete; or preservative-treated wood.

(2) Protection may be by surrounding the casing with a concrete slab which has horizontal dimensions of four feet by four feet, which rises 12 inches vertically above grade at the outer edge, and whose surface is sloped away from the well casing.

(3) If a monitoring well is to be protected by means other than those prescribed in subitems (1) and (2), the licensee or engineer shall first obtain written approval for the other means from the administrative authority. The alternate method must assure a degree of protection at least equal to that provided by the methods in subitem (1) or (2).

C. A monitoring well need not be protected according to the procedures in item B if the well is routinely inspected at least weekly and if the well is located in an area where it is not likely to be damaged by vandals or by impact from heavy equipment, cars, snowmobiles, or similar vehicles.

D. In addition to the measures prescribed in item B, a monitoring well which is cased with plastic must be protected within a watertight schedule 40 steel casing which is embedded in cement or concrete to a depth of two feet. The steel casing must be covered with an overlapping, locking steel cap. The inner casing must be capped or protected with an overlapping, threaded cap.

E. If a monitoring well is damaged, the damage must be corrected within 72 hours of its discovery. If a monitoring well is damaged irreparably, it must be properly sealed and abandoned in accordance with parts 4725.2600 to 4725.2900 within seven days of discovery of the damage.

Statutory Authority: *MS s 156A.03*

History: *8 SR 1625*

LOCATION OF WELLS

4725.1900 LOCATION OF WELL.

A well shall be located consistent with the general layout and surrounding area giving due consideration of the size of the lot, contour of the land, slope of the water table, rock formation, porosity and absorbency of the soil, local groundwater conditions, and other factors necessary to implement the basic policies that follow. A well shall be:

A. Located on a site which has good surface drainage, at a higher elevation than, and at a sufficient distance from, cesspools, buried sewers, septic tanks, privies, barnyards and feedlots, or other possible sources of contamination so that the supply cannot be affected thereby, either underground or from the surface of the ground.

B. Located so that the well and its surrounding area can be kept in a sanitary condition.

C. Adequate in size, design, and development for the intended use.

D. Constructed so as to maintain existing natural protection against pollution of water-bearing formations and to exclude all known sources of pollution from entering the well.

E. Located at least five feet from a property line. A well constructed to produce water for a community public water supply shall be located at least 50 feet from a property line. In locating any well, consideration shall be given to the sources of contamination from adjacent property. "Community public water supply" as prescribed in part 4720.0200 means a system providing piped water for human consumption, which serves 15 service connections or living units or regularly serves at least 25 persons residing in the area for more than six months of the year.

Statutory Authority: *MS s 156A.01 to 156A.08*

4725.2000 DISTANCE FROM POLLUTION OR CONTAMINATION SOURCES.

Subpart 1. **Distances.** A well shall be at least:

A. One hundred fifty feet from a preparation area or storage area of spray materials, commercial fertilizers, or chemicals that may result in pollution of the soil or groundwater.

B. One hundred feet from a below-grade manure storage area if in conformance with Minnesota Pollution Control rule SW 52(2)(e).

A below grade manure storage area may present a special hazard to groundwater quality which may require a greater isolation distance than provided for in these rules depending upon hydrologic and geologic conditions.

C. Seventy-five feet from cesspools, leaching pits, and dry wells.

D. Fifty feet from a buried sewer, septic tank, subsurface disposal field, grave, animal or poultry yard or building, privy, or other contaminants that may drain into the soil.

E. Twenty feet from a buried sewer constructed of cast iron pipe or plastic pipe (ASTM 2665 for polyvinyl chloride pipe or ASTM 2661 for acrylonitrile-butadiene-styrene pipe, as prescribed in the Minnesota Plumbing Code, part 4715.0420, subpart 3 with tested watertight joints, a pit or unfilled space below ground surface, a sump or a petroleum storage tank except that a well may be drilled closer than 20 feet to an approved basement, but no closer than as provided in part 4725.2100. A community public water supply well shall be isolated at least 50 feet from any source of contamination.

"Sump" means a watertight tank which receives sewage or liquid waste and which is located below the normal grade of the gravity system and must be emptied by mechanical means.

F. Wells with casings less than 50 feet in depth and not encountering at least ten feet of impervious material shall be located at least 150 feet from

MINNESOTA RULES

CHAPTER 6115, PUBLIC WATER RESOURCES

CHAPTER 6115
DEPARTMENT OF NATURAL RESOURCES
PUBLIC WATER RESOURCES

115.0010 STATUTORY AUTHORITY.

The commissioner of natural resources is authorized by Minnesota Statutes, ection 105.44, subdivision 10, to establish fee schedules for permit applications, eld inspections, and monitoring, with regard to permits required by Minnesota tatutes, chapter 105.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

115.0020 SCOPE.

The fees established in parts 6115.0010 to 6115.0100 shall not be imposed n any state or federal agency.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

115.0030 DEFINITIONS.

Words used in parts 6115.0010 to 6115.0100 have the meanings normally scribed to them except:

A. "Appropriation of water," "waters of the state," and "public waters" ave the meanings given by Minnesota Statutes, section 105.37.

B. "Field inspection" means an on-site determination of relevant char- cteristics of the area involved in or affected by the proposed or permitted roject.

C. "Monitoring" means checking on the status or progress of activities uthorized by permit, and checking and inspecting special aspects of proposed ermit applications, during construction, implementation, or after completion of ermitted activities.

D. "Division" means the Division of Waters, Department of Natural esources.

E. "Commissioner" means the commissioner of natural resources or the ommissioner's authorized representative.

F. "Project cost" means the total cost of all materials, services, equip- ent purchase or rental, and labor expended for the portion of the project roposed in the permit application which are directly governed by protected aters permit rules, parts 6115.0150 to 6115.0280.

G. "Protected waters" means those waters of the state identified as ublic waters or wetlands under Minnesota Statutes, sections 105.37, subdivi- ions 14 and 15, and 105.391, subdivision 1.

H. "Ordinary high water mark" means the boundary of protected waters s defined in Minnesota Statutes, section 105.37, subdivision 16.

I. "Shoreline" means:

(1) for water bodies other than watercourses, the lateral measure- ment along the contour of the ordinary high water mark; and

(2) for watercourses, the top of the bank of the channel (coincides with ordinary high water mark as defined in Minnesota Statutes, section 105.37, subdivision 16).

J. "State agency" has the meaning given in Minnesota Statutes, section 16.011.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0040 [Repealed, 10 SR 236]

6115.0050 [Repealed, 10 SR 236]

6115.0060 PERMIT APPLICATION FEES.

A permit application fee of $30 shall accompany permit applications submit- ted under Minnesota Statutes, section 105.41, appropriation and use of water, Minnesota Statutes, section 105.535, relating to dams, Minnesota Statutes, sec- tion 105.42, relating to alterations of protected waters, Minnesota Statutes, section 105.64, relating to the drainage or diversion of water to facilitate mining, and Minnesota Statutes, section 105.391, relating to water bank.

A minimum additional permit application fee of $20 if required by part 6115.0080 must accompany each permit application for applications submitted under Minnesota Statutes, section 105.42, relating to alterations of protected waters and Minnesota Statutes, section 105.64, relating to the drainage or diver- sion of water to facilitate mining. (For permit applications requiring an addition- al permit application fee, the minimum payment to accompany the application is $50; a $30 application fee plus a $20 additional permit application fee.)

If the permit application fee and the minimum additional permit application fee required by part 6115.0080 do not accompany the application, the applicant will be so notified. If no fee is received within 30 days from mailing of the written notice, the commissioner shall consider the application withdrawn and no further action shall be taken on it unless the applicant submits a new application accompanied by the minimum fee.

If a project requires several permit applications, the permit application fee and minimum additional permit application fee must accompany each applica- tion. For example, if a project entails both appropriating water and changing the course, current, or cross-section of a lake, there shall be two applications and two sets of fees.

The permit application fee and minimum additional permit application fee are not returnable, whether the application is permitted, modified, or denied, unless the commissioner determines the activity does not require a permit.

Payment of all fees covered by parts 6115.0010 to 6115.0030, 6115.0060, 6115.0080 to 6115.0100, and 6115.0130 shall be made by check or money order payable to the Minnesota state treasurer. Cash cannot be accepted.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0065 AMENDMENT AND TRANSFER FEE.

Each request to amend or transfer an existing permit shall be accompanied by a $30 fee.

The effective date of this part will be August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0070 [Repealed, 10 SR 236]

6115.0080 ADDITIONAL FEES AUTHORIZED BY MINNESOTA STATUTES, CHAPTER 105.

Subpart 1. **Additional permit application fees.** Additional permit application fees for works affecting protected waters, authorized under Minnesota Statutes, sections 105.42 and 105.64 shall be based on estimated project cost, the amount of material deposited in or removed from the protected waters, and the amount of shoreline affected by the project. The commissioner shall make the final determination of project cost used to calculate the additional permit application fee. The additional permit application fee shall be at least $20 but otherwise the lesser of (1) $250, (2) one percent of the project cost, or (3) the largest of the fees calculated from the following three parameter schedules.

1. Project Cost Parameter

Cost	Fee
$1 to $10,000	one percent of project cost.
$10,001 to $40,000	$100 plus one-half percent of project cost in excess of $10,000.
Greater than $40,000	$250.

2. Shoreline Affected Parameter

Length	Fee
1 to 200 feet	50 cents per foot of shoreline.
201 to 800 feet	$100 plus 25 cents per foot of shoreline in excess of 200 feet.
Greater than 800 feet	$250.

3. Fill-Excavation Parameter

Yards of Material	Fee
1 to 200 cubic yards	50 cents per cubic yard of material.
201 to 800 cubic yards	$100 plus 25 cents per cubic yard of material in excess of 200 cubic yards.
Greater than 800 cubic yards	$250.

A. For channel excavation projects:

(1) the shoreline affected is the difference in length in feet between the existing channel and the proposed channel.

(2) the volume in cubic yards is only that material filled or excavated in existing protected waters.

B. Additional permit application fee for protection of shoreline from erosion by placement of riprap and to recover shoreland lost by erosion or other natural forces, shall be limited to $20.

C. If a dispute arises between the commissioner and a permit applicant over project cost, the commissioner may require the permit applicant to submit a project cost estimate prepared by a registered professional engineer, contractor, planning consultant, or other qualified professional entity.

D. No additional permit application fee shall be charged for any dam subject to parts 6115.0300 to 6115.0520.

E. If the department decides to issue a permit, a bill will be submitted to the applicant for the additional amount due along with a statement describing the scope of the permit to be issued. Fees are payable within 30 days of receipt, failure to pay is grounds for denying the application.

F. If the application is denied, there is no additional fee due beyond the amount required with the application.

G. The additional permit application fee for permit applications filed after the work applied for has been partially or wholly completed (except for emergency work provided for in existing permit rules and policies) shall be double the amount that would have been charged if a timely application had been filed. In the case of a belated permit application, the permit application fee and the additional permit application fee shall both accompany the application or the commissioner shall proceed to issue a restoration order pursuant to Minnesota Statutes, section 105.461. If the belated permit application is denied, all but $70 (the application fee and double the minimum permit application fee) will be returned.

H. If a hearing is demanded and if the outcome of the hearing is a decision to issue a permit, payment of all required fees must precede issuance. The fee charged will be based on the schedules contained in this part regardless of whether a permit application has been filed.

The effective date of this subpart will be July 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 causes the effective date to be later.

Subp. 2. **Field inspection fees.** If a field inspection is conducted, field inspection fees shall be charged only for: (1) projects requiring an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D and the environmental review program rules, parts 4410.0200 to 4410.7800; (2) projects undertaken without a permit or application as required by Minnesota Statutes, sections 105.37 to 105.64; or (3) projects undertaken in excess of limitations established in an issued permit.

The fee charged will be the actual cost of the field inspection, but shall not be less than $25 nor greater than $750. Examples of field inspection costs are:

A. state salaries, including fringe benefits and overhead, (travel and inspection time of state employees multiplied by actual hourly rates);

B. transportation to and from inspection site, laboratories and other documented travel sites, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

C. expense of purchase, rental, or repair of special equipment and supplies;

D. living expenses away from home, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

E. inspection and consultant services contracted for by the state; and

F. laboratory expenses and analysis of data.

Field inspection fees shall not be charged for any dam subject to parts 6115.0300 to 6115.0520. Such dams are subject to the inspection fee require-

ments of part 6115.0520. Field inspection fees for all other water level control structures shall be charged pursuant to parts 6115.0010 to 6115.0130.

The effective date of this subpart will be August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 requires a later effective date.

Subp. 3. [Repealed by amendment, 10 SR 236]

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0090 FEES FOR MONITORING ACTIVITIES.

If the project requires an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D, and parts 4410.0200 to 4410.7800, the commissioner shall charge an additional fee for monitoring subject to the following:

A. Where the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring shall be paid by the permittee in accordance with procedures set forth in the permit.

B. When the commissioner determines after the permit is issued, that there is a need for monitoring, the commissioner shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of the monitoring shall be paid by the permittee.

Actual costs incurred and charged by the state are determined in the same manner as prescribed for field inspections.

The commissioner may allow the permittee to provide the monitoring service or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Fees for monitoring activities shall not be charged for any dam subject to parts 6115.0300 to 6115.0520.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0100 [Repealed, 10 SR 236]

6115.0110 ANNUAL WATER APPROPRIATION PROCESSING FEE.

Subpart 1. **In general.** An annual water appropriation processing fee shall be submitted for each water appropriation permit in force at any time during the year. The fees are required whether or not the permittee appropriated or used any water as authorized by permit during the year.

Subp. 2. **Fee schedule.** The fee shall be based on the following schedule:

A. for irrigation permits, $15 for the first permitted 160 acres or portion thereof, and $25 for each additional permitted 160 acres or portion thereof;

B. for all other permits, $5 for each permitted 10,000,000 gallons or portion thereof;

C. the annual water appropriation processing fee shall not exceed a total fee of $500 per permit.

Subp. 3. **Billing and payment.** A notice of the fees owed will be mailed to the permittee, with the reporting forms, by the commissioner.

The fee, with accompanying report, for the calendar year's appropriation or use of water, shall be sent to the commissioner no later than February 15 of the following year.

Failure to pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner.

The effective date of this part will be August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

FEES FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS

6115.0130 FEE SCHEDULE FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS.

Subpart 1. **In general.** This schedule is established pursuant to Minnesota Statutes, section 84.58, subdivision 8. It provides for payment of permit application fees and additional fees for processing and analyzing the application, and issuing the permit. It also includes fees for the inspection and monitoring of activities authorized by the permit.

Subp. 2. **Permit application fee.** A permit application fee of $30, check or money order, payable to the state treasurer, shall accompany each permit application for underground storage of gas or liquid.

If the fee does not accompany the application, the applicant will be so notified, and there will be no further action taken on the application until the fee is submitted.

Subp. 3. **Additional fees.** The applicant or permittee shall pay the actual costs of field inspection and monitoring as follows.

A. When a field inspection is conducted, the costs charged will be the sum of: salaries (inspection time of state employees multiplied by actual hourly rates); transportation to and from inspection site, based on current state Department of Administration rates; fair rental for any special equipment and supplies; and inspection and consultant services contracted for by the state.

B. When the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring, whether conducted by state personnel or by consultants hired by the state, shall be paid by the permittee in accordance with procedures in the permit.

When the commissioner determines after the permit is issued that there is a need for monitoring, the commissioner shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of monitoring shall be paid by the permittee.

The commissioner may allow the permittee to provide monitoring services, or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Subp. 4. **Refund of fees.** The permit application fee for a permit application shall not be refunded for any reason, even if the application is denied or withdrawn.

Subp. 5. **Billing and payment of fees.** The commissioner shall submit an itemized bill to the applicant or permittee for all additional fees. Fees are payable within 30 days of receipt; failure to pay is grounds for suspending the permit or for taking other legal actions as required. In the case of an applicant, a permit shall not be issued until all fees owed have been paid.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

provides a notarized detailed accounting of expenditures), a rate of 2 1/2 percent

B for the next $400,000, 1 1/2 percent,

C for the next $500,000, one percent,

D one-half of one percent of all costs in excess of $1,000,000, and

E if the final total cost exceeds the estimate, the difference as provided in part 6115.0410, subpart 11.

For dams which will not be constructed to maximum storage elevation within five years of the date construction begins (such as dams for storage of mining waste materials) computation will be based on applicant's work schedule outlining proposed staging and a certified estimate of costs based on staging and a certified estimate of costs based on staging intervals not exceeding five years in duration. At the end of each stage, or at intervals not exceeding five years in duration until completion, the applicant shall file an affidavit of actual costs for each stage or interval not exceeding five years. Whenever the actual costs exceeds the estimate the applicant shall pay the difference.

Subp. 3. **Periodic fees.** Periodic fees shall be charged to owners for each year and inspection is made pursuant to part 6115.0360, subpart 3, of $30 per dam plus an additional fee based on surface (as defined in part 6115.0320) of $0.01 per square foot for the first 1,000 and $0.001 for each square foot in excess of 1,000, payable on or before the end of the state fiscal year, June 30.

Subp. 4. **Annual records.** The commissioner shall keep annual records of inspection costs which shall be provided upon request of any applicant who paid inspection fees.

Statutory Authority: *MS s 105.535*

REVIEW OF PERMIT APPLICATIONS FOR APPROPRIATION AND USE OF WATERS

6115.0600 POLICY.

The purpose of these parts is to provide for the orderly and consistent review of permit applications for appropriation and use of waters of the state in order to conserve and utilize the water resources of the state in the public interest. In the application of these parts, the Department of Natural Resources shall be guided by the policies and requirements declared in Minnesota Statutes, chapters 105 and 116D.

Any appropriation must be consistent with laws and rules of federal, state, and local governments.

Statutory Authority: *MS s 105.535*

6115.0610 PURPOSE AND STATUTORY AUTHORITY.

These parts set forth minimum standards and criteria pertaining to the regulation, conservation, and allocation of the water resources of the state, including the review, issuance, and denial of water appropriation applications and the modification, suspension, or termination of existing permits.

Further provisions for the administration of these parts are found in Minnesota Statutes, chapter 105. Permits for water appropriation for mining shall be in agreement with provisions of Minnesota Statutes, section 105.64.

Statutory Authority: *MS s 105.535*

6115.0620 SCOPE.

Permits shall be required for, and these parts shall apply to, any appropriation of waters of the state, except for the following:

A. Appropriation of water for domestic uses serving less than 25 persons for general residential purposes.

B Test pumping of a groundwater source.

C Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totaling no more than 1,000,000 gallons per year.

D Agricultural field tile or open ditch drainage systems, including pumping, to remove water from crop lands. This shall not preclude the need for compliance with Minnesota Statutes, chapter 106 and for permits for changes in course, current, or cross-section of public waters in the event that the agricultural drainage system adversely affects public waters. Adverse effects on public waters may include partial or complete drainage of public waters, high water or flooding conditions on surrounding lands, and accelerated erosion and sedimentation.

E. Reuse and discharge of waters resulting from an appropriation of waters of the state for which a permit has been granted, subject to applicable laws, and rules of other state and federal governmental agencies.

Statutory Authority: *MS s 105.535*

6115.0630 DEFINITIONS.

Subpart 1. **Scope; shall.** For the purpose of these rules, the terms or words defined in this part have the meanings given therein, except where the context clearly indicates otherwise. The word "shall" is mandatory, not permissive.

Subp. 2. **Aquifer.** "Aquifer" means any water-bearing bed or stratum of earth or rock capable of yielding groundwater in sufficient quantities that can be extracted.

Subp. 3. **Appropriation.** "Appropriation" shall have the meaning prescribed in Minnesota Statutes, section 105.37, subdivision 5, "appropriation includes but is not limited to taking, regardless of the use to which the water is put."

Subp. 4. **Artesian aquifer or confined aquifer.** "Artesian aquifer" or "confined aquifer" means a water body or aquifer overlain by a layer of material of less permeability than the aquifer. The water is under sufficient pressure so that when it is penetrated by a well, the water will rise above the top of the aquifer. A flowing artesian condition exists when the water flow is at or above the land surface.

Subp. 5. **Basin.** "Basin" means a depression capable of containing water which may be filled or partly filled with waters of the state. It may be a natural, altered, or artificial depression.

Subp. 6. **Commissioner.** "Commissioner" refers to the commissioner of the Department of Natural Resources or the commissioner's authorized representative.

Subp. 7. **Consumptive use or consumption.** "Consumptive use" or "consumption" refers to water withdrawn and not directly returned to the same waters as the source for immediate further use in the area.

Subp. 8. **Division.** "Division" means the Division of Waters, Department of Natural Resources.

Subp. 9. **Domestic use.** "Domestic use" means use for general household purposes for human needs such as cooking, cleaning, drinking, washing, and waste disposal, and uses for on-farm livestock watering excluding commercial livestock operations which use more than 10,000 gallons per day and 1,000,000 gallons per year.

Subp. 10. **Dug pit.** "Dug pit" means an artificial excavation such as sump, trench, pond, water hole, or other basin constructed for the purpose of intercepting and capturing surface and ground water, and often involving groundwater under water table or unconfined conditions.

Subp. 11. **Groundwater.** "Groundwater" means subsurface water in the saturated zone. The saturated zone may contain water under atmospheric pressure (water table condition), or greater than atmospheric pressure (artesian condition).

Subp. 12. **Protected flow.** "Protected flow" is defined as the amount of water required in the watercourse to accommodate instream needs such as water-based recreation, navigation, aesthetics, fish and wildlife habitat, water quality, and needs by downstream higher priority users located in reasonable proximity to the site of appropriation.

Subp. 13. **Protection elevation.** "Protection elevation" is defined as the water level of the basin necessary to maintain fish and wildlife habitat, existing uses of the surface of the basin by the public and riparian landowners, and other values which must be preserved in the public interest.

Subp. 14. **Public water supply.** "Public water supply" refers to the various supplies of water used primarily for domestic supply purposes and obtained from a source or sources by a municipality, a water district, a person, or corporation where water is delivered through a common distribution system, as further defined in Minnesota Statutes, section 144.382, subdivision 4.

Subp. 15. **Safe yield for water table condition.** "Safe yield for water table condition" means the amount of groundwater that can be withdrawn from an aquifer system without degrading the quality of water in the acquifer and without allowing the long term average withdrawal to exceed the available long term average recharge to the aquifer system based on representative climatic conditions.

Subp. 16. **Safe yield for artesian condition.** "Safe yield for artesian condition" means the amount of groundwater that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without the progressive decline in water pressures and levels to a degree which will result in a change from artesian condition to water table condition.

Subp. 17. **Water table aquifer or unconfined aquifer.** "Water table aquifer" or "unconfined aquifer" means an aquifer where groundwater is under atmospheric pressure.

Subp. 18. **Waters of the state.** "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters (Minnesota Statutes, section 105.37, subdivision 7).

Subp. 19. **Watercourse.** "Watercourse" means any natural, altered, or artificial channel having definable beds and banks capable of conducting confined runoff from adjacent lands (Minnesota Statutes, section 105.37, subdivisions 10, 11, and 12).

Subp. 20. **Well.** "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed where the intended use is for the location, diversion, or acquisition of groundwater (Minnesota Statutes, section 156A.02, subdivision 1).

Statutory Authority: *MS s 105.535*

6115.0640 COORDINATION WITH OTHER AGENCIES.

Nothing in these parts is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other international, federal, state, regional, or local governmental subdivisions with the authority to regulate the appropriation of waters of the state. The issuance of a permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review of permit applications with other units of government having jurisdiction in such matters.

Statutory Authority: *MS s 105.535*

6115.0650 SEVERABILITY.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof, shall not make void any other paragraph, subparagraph, subdivision, or any other part.

Statutory Authority: *MS s 105.535*

6115.0660 APPLICATION FOR PERMIT.

Subpart 1. **Requirement.** Applications shall be submitted for each surface or ground water source from which water is proposed to be appropriated. A separate application shall be required for the following:

A. for each distribution system if the water is used in more than one common distribution system;

B. for each well(s) completed in different aquifers if groundwater is to be appropriated from separate wells completed in more than one aquifer; and

C. for each basin or watercourse involved if surface water is to be appropriated from several different basins or watercourses.

Subp. 2. **Evidence of ownership.** The applicant must provide written evidence of ownership, or control of, or a license to use, the land overlying the groundwater source or abutting the surface water source from which water will be appropriated.

Subp. 3. **Information required.** All applicants shall submit the following information when it is reasonably available. Additional submittals may be required as prescribed in parts 6115.0680 to 6115.0720 and where deemed necessary by the commissioner in order to adequately evaluate the applications.

A. A completed application on forms supplied by the commissioner.

B. The required application fee (Minnesota Statutes, section 105.44, subdivision 10).

C. Aerial photographs, maps, sketches, detailed plat, topographic maps, or other descriptive data sufficient to show:

(1) the location of the area of use;

(2) the outline of the property owned, or controlled by the applicant in proximity to the area of use;

(3) the location of the proposed point of appropriation such as well(s) location, stream bank pump(s) or the location of other facilities for appropriation of water;

(4) if ground water is involved, the location of test hole borings which have been drilled on the property from which the appropriation will be made.

D. Signed statement that copies of the application and accompanying documents have been sent to the mayor of the city, secretary of the board of supervisors of the soil and water conservation district, or the secretary of the board of managers of the watershed district if the proposed project is within a city or within or affects a watershed district or soil and water conservation district or a city (Minnesota Statutes, section 105.44, subdivision 1).

E. Statement of justification supporting the reasonableness and practicality of use with respect to adequacy of the water source, amounts of use, and purposes, including available facts on:

(1) hydrology and hydraulics of the water sources involved, including for surface waters the applicant's analysis of the effect of proposed withdrawals on levels and flows and anticipated impacts, if any, on instream flow or lake level conditions to the extent that such facts are not already available to the commissioner;

(2) proposed pumping schedule including rates, times, and duration;

(3) amounts of water to be appropriated on a maximum daily, monthly, and annual basis;

(4) means, methods, and techniques of appropriation;

(5) alternative sources of water or methods which were considered, to attain the appropriation objective and why the particular alternative proposed in the application was selected.

F. Information on any water storage facilities and capabilities and any proprosed reuse and conservation practices.

G. Application for use of surface water shall include the following additional data:

(1) A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable, and practical; otherwise the applicant shall submit as part of the application a written statement agreeing in such case to withstand the results of no appropriation (Minnesota Statutes, section 105.417, subdivision 5).

(2) For appropriation from natural basins or natural watercourses, facts to show that reasonable alternatives for appropriating water have been considered including use of water appropriated during high flows and levels and stored for later use and the use of ground water.

(3) For basins less than 500 acres in surface area the applicant shall notify all riparian landowners and provide the commissioner with a list of all land owners notified; attempt to obtain a signed statement from as many riparian landowners as the applicant is able to obtain stating their support to the proposed appropriation; and provide an accounting of number of signatures of riparian owners the applicant is unable to obtain (Minnesota Statutes, section 105.417, subdivision 3, clause (c)).

H. Application for use of groundwater, except for agricultural irrigation (part 6115.0680) shall include the following data:

(1) test hole logs (if any) and water well record(s);

(2) hydrologic test data; and

(3) hydrologic studies, if the above data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal or are inadequate to allow assessment of the effects of the proposed appropriation on the water resource and on nearby wells.

Subp. 4. **Waiver.** Whenever information required by parts 6115.0660 and 6115.0680 to 6115.0720 is unnecessary or inapplicable, the commissioner shall waive those requirements.

Statutory Authority: *MS s 105.415*

6115.0670 COMMISSIONER'S ACTIONS ON PERMIT APPLICATIONS.

Subpart 1. **In general.** Upon receipt of the information required from the applicant under parts 6115.0660 and 6115.0680 to 6115.0720, where applicable, the commissioner shall take action on the application as follows.

Subp. 2. **Review and analysis of data.** Review and analysis of data:

A. The commissioner shall consider the following factors, as applicable:

(1) the location and nature of the area involved and the type of appropriation and its impact on the availability, distribution, and condition of water and related land resources in the area involved;

(2) the hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use;

(3) the probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects, and alternatives to the proposed appropriation;

(4) the relationship, consistency, and compliance with existing federal, state, and local laws, rules, legal requirements, and water management plans;

(5) the public health, safety, and welfare served or impacted by the proposed appropriation;

(6) the quantity, quality, and timing of any waters returned after use and the impact on the receiving waters involved;

(7) the efficiency of use and intended application of water conservation practices;

(8) the comments of local and regional units of government, federal and state agencies, private persons, and other affected or interested parties;

(9) the adequacy of state water resources availability when diversions of any waters of the state to any place outside of the state are proposed;

(10) the economic benefits of the proposed appropriation based on supporting data when supplied by the applicant.

B. The commissioner shall further consider the following factors for appropriation from watercourses:

(1) historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff, and other pertinent data;

(2) physical characteristics such as discharge, depth, and temperature, and an analysis of the hydrologic characteristics of the watershed;

(3) aquatic system of the watercourse, riparian vegetation, and existing fish and wildlife management within the watercourse;

(4) frequency of occurrence of high and low flows;

(5) feasibility and practicability of off-stream storage of high flows for use in providing water supply during periods of normal low flows, when supply is limited by existing and anticipated use.

C. The commissioner shall further consider the following factors for appropriation from basins:

(1) total volume of water within the basin;

(2) slope of the littoral zone;

(3) available facts on historic water levels of the basin and other relevant hydrologic factors;

(4) cumulative long-range ecological effects of the proposed appropriation;

(5) natural and artificial controls which affect the water levels of the basin.

D. The commissioner shall further consider the following factors for appropriation of groundwater:

(1) type and thickness of the aquifer;

(2) subsurface area of the aquifer;

(3) area of influence of the proposed well(s);

(4) existing water levels in the aquifer and projected water levels due to the proposed appropriation;

(5) other hydrologic and hydraulic characteristics of the aquifer involved; and

(6) probable interference with neighboring wells.

Subp. 3. **Decision on applications.** The commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within

30 days after receiving mailed notice outlining the reasons for denying or modifying an application.

Decisions by the commissioner are further subject to the administrative provisions of Minnesota Statutes, sections 105.44 to 105.463 and 105.64. These sections include information and requirements on procedure, authority, timing of actions, fees, notice, investigations, violations and penalties, and special provisions regarding mining operations.

Based on these statutory requirements and other applicable provisions of Minnesota Statutes, chapter 105, the commissioner shall make decisions as follows:

A. No permit shall be granted if:

(1) for application involving diversion of any waters of the state, surface or ground water, to a place outside the state, the remaining waters in the state will not be adequate to meet the state water resources needs during the specified life of the diversion (Minnesota Statutes, section 105.405, subdivision 2);

(2) there is no conflict between competing users but the quantity of available waters of the state, in the area involved, are inadequate to provide the amounts of water proposed to be appropriated;

(3) the appropriation is not reasonable, practical, and does not adequately protect public safety and promote the public welfare (Minnesota Statutes, section 105.45);

(4) the appropriation is not consistent with approved state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans (Minnesota Statutes, section 105.41, subdivision 1a);

(5) there is an unresolved conflict between competing users for the waters involved and the conflict has not been resolved pursuant to provision of part 6115.0740.

B. Approval of any surface water appropriation application shall be further subject to the following:

(1) For all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable, or feasible (Minnesota Statutes, section 105.41, subdivision 1a).

(2) For natural and altered watercourses, except for drainage ditches established under Minnesota Statutes, chapter 106, consumptive appropriation may be limited consistent with Minnesota Statutes, section 105.417, subdivision 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow.

(3) Permits to appropriate water for any purpose from streams designated trout streams by commissioner's orders, pursuant to Minnesota Statutes, section 101.42, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels (Minnesota Statutes, section 105.417, subdivision 4).

(4) For natural and altered basins the commissioner shall:

(a) Establish a protection elevation below which no appropriation shall be allowed (Minnesota Statutes, section 105.417, subdivision 3, clause (b)).

(b) Limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, An Inventory of Minnesota Lakes." The actual collective annual allocation may be considerably less than the maximum. This limitation is as provided by Minnesota Statutes, section 105.417, subdivision 3, clause (a).

(c) For natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water level in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water.

(5) The establishment of protection elevation and limitation on maximum withdrawals contained in units (a) and (b), shall not apply to artificial and altered basins constructed primarily for the purpose of storing highwaters and flood flows as water conservation or contingency flow alternatives when such alternatives are approved by the commissioner.

(6) Protected flows and protection elevations shall be established for the purposes as defined in part 6115.0630 and shall be based on available information considered in subpart 2, items B and C. For new applications the proposed establishment of protected flows or protection elevations shall be part of the permit process outlined in subpart 3 including opportunity for public hearing. Existing permittees who will be affected by the proposed establishment of protected flows or protection elevations shall be notified of such proposals and shall be provided opportunity for public hearing before modification of their permits based on the procedures outlined in part 6115.0750, subpart 5, item B. Upon the submission of data set forth in part 6115.0670, subpart 2, item A or B for the specified watercourse segment or basin by a state agency agreeing to pay the costs of any necessary public hearings, the commissioner shall establish requested protected flows and elevations.

C. Approval of appropriation from ground water shall be further subject to the following:

(1) The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical.

(2) If the commissioner determines, based on substantial evidence, that a direct relationship of ground and surface waters exists such that there would be adverse impact on the surface waters through reduction of flows or levels below protected flows or protection elevations the amount and timing of the proposed appropriation from ground water shall be limited.

(3) Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data are not available to allow the commissioner to adequately determine the effects of the proposed appropriation. If a conditional appropriation is allowed, the commissioner shall make further approval, modification, or denial when sufficient hydrologic data are available.

(4) The commissioner shall limit the use of dug pits for appropriating water when such pits are so located that they may reasonably be expected to affect protected flows of watercourses or protection elevations of basins.

Subp. 4. **Waiver.** The commissioner shall waive any of the provisions of subpart 3 if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical, or in the public interest. In the event the commissioner does not grant an applicant's request for waiver the applicant may demand a hearing.

Subp. 5. **Specific types of appropriation and use.** Additional requirements and decisions governing agricultural irrigation, public water supplies, dewatering,

water level maintenance, and mining are also contained in parts 6115.0680 to 6115.0720.

Statutory Authority: *MS s 105.415*

6115.0680 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR AGRICULTURAL IRRIGATION.

Subpart 1. ***Additional application information.*** *For ground* water appropriation, the applicant must submit to the commissioner the following data in addition to the requirements of part 6115.0660.

A. If the application is for use of groundwater from an aquifer system for which adequate groundwater availability data are available and therefore is designated by the commissioner as a Class A application, (Minnesota Statutes, section 105.416, subdivision 1):

(1) copies of test hole log(s) to identify the aquifer the proposed well will penetrate;

(2) copies of the water well record(s) and production test data;

(3) additional aquifer test data as may be required by the commissioner if the test holes, water well records, and production test data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal, or are inadequate to allow assessment of the effects of the proposed appropriation on other nearby wells.

B. If the application is for use of groundwater from an aquifer system *for which inadequate groundwater availability data are* available and therefore is designated by the commissioner as a Class B application, (Minnesota Statutes, section 105.416, subdivision 1) the applicant shall supply the following additional information as required by Minnesota Statutes, section 105.416, subdivision 2, including:

(1) copies of test hole log(s) to identify the aquifer the proposed well will penetrate;

(2) copies of water well record(s) and production test data;

(3) *the anticipated groundwater* quality in terms of the measures of quality commonly specified for the proposed water use, when existing data indicate the water supply is not suitable for irrigation;

(4) the location of each domestic well, for which information is readily available, located within the area of influence or within 1-1/2 mile radius of the proposed irrigation well, whichever is less;

(5) readily available information from water well records, reports, studies, and field measurements regarding the domestic wells within the area of *influence* or a 1-1/2 mile radius of the proposed irrigation well whichever is less, such as:

(a) owner's name, address, and phone number;

(b) depth of well in feet;

(c) diameter of well and casing type (concrete curb, steel, wooden, clay tile, etc.);

(d) nonpumping water level (in feet) below land surface;

(e) age of well (when constructed);

(f) type of pump (*shallow-jet, deep well jet, submersible* reciprocating, etc.) and rate of discharge; and

(g) length of drop pipe in well;

(6) results of a pumping test of the aquifer system as required in Minnesota Statutes, section 105.416, subdivision 3, clause (e).

(7) The commissioner shall in any specific application, waive any of the requirements of subitems (1) to (6), when the necessary data are already available, as required in Minnesota Statutes, section 105.416, subdivision 2.

Subp. 2. **Commissioner's actions.** The commissioner shall analyze and evaluate applications based on facts supplied by the applicant pursuant to parts 6115.0660 and subpart 1 of this part. Decisions shall be subject to the applicable procedures outlined in part 6115.0670 and based on recommendations of the soil and water conservation district, soil surveys, and other available data on soil characteristics relating to soil suitability for agricultural irrigation and adequacy of existing or proposed soil and water conservation measures in order to protect water quality and prevent erosion and sedimentation.

The commissioner shall determine the amount of water allowed to be used under the above paragraph based on:

A. Acreage of lands involved.

B. Climatic characteristics of the area involved.

C. Dominant soil types of the acreage to be irrigated and major crops to be irrigated.

D. Best available technology, methodology, and crop-water use requirement information including, but not limited to, Irrigation Guide for Minnesota, Soil Conservation Service, U.S. Department of Agriculture, Saint Paul, Minnesota, 1976.

E. When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may in cooperation with irrigators and agricultural experts establish an irrigation scheduling system to provide for improved conservation of water.

F. For irrigation from surface water, where stream flow or lake level records are unavailable or when available records indicate that flows or levels during the irrigation season would be inadequate if all potential riparian landowners would use the water for irrigation, the amount of appropriation shall be limited to no more than one-half acre-foot per acre of riparian land owned or controlled by the applicant except for appropriation for wild rice paddies as is provided in item G. *Riparian lands for the purpose of these rules* shall be those 40-acre tracts or government lots, or portions thereof, that directly abut a basin or watercourse. This provision shall apply until a protected flow or protection elevation has been established in accordance with part 6115.0670, subpart 3, item B.

G. The amount of appropriation for wild rice paddies shall be based on consideration of climatic characteristics of the area and the best available technology relating to amounts of water needed to raise wild rice.

Statutory Authority: *MS s 105.415*

6115.0690 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR *PUBLIC* WATER SUPPLIES.

Subpart 1. **Additional application information.** The applicant shall be required to submit to the commissioner all or portions of the following data in addition to the requirements of part 6115.0660:

A. the number of domestic users;

B. reasonable projection of population growth;

C. the number and type of industrial and commercial users of the public water supply system;

D. *the amount of water to* be supplied to domestic, industrial, and commercial users respectively;

E. other users by type of use and amount to be used from the public water supply system such as golf courses, recreational lake level maintenance, water transferred to other supply systems;

F. information regarding the quantity of the appropriated water to be used in distribution and waste water treatment facilities, not including volume of actual waste water; and

G. details on emergency plans for water shortage periods outlining public information programs, priorities for limitations of discretionary water use, and alternate sources of public water supplies.

Subp. 2. **Commissioner's actions.** The commissioner shall allow the appropriation of water for public water supply systems based on evaluation and analysis of the data submitted by the applicant under provisions of parts 6115.0660 and subpart 1 of this part and the procedures outlined in part 6115.0670 and subject to subpart 3.

Subp. 3. **Other requirements.** Appropriation permits issued to public water supply authorities shall be subject to requirements of Minnesota Statutes, section 105.418, relating to critical water deficiency periods and restriction of nonessential uses.

Statutory Authority: *MS s 105.415*

6115.0700 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR WATER LEVEL MAINTENANCE FOR BASINS.

Subpart 1. **Additional application information.** For water appropriation applications for the purpose of establishing and maintaining water levels for basins the applicant shall submit the following data in addition to the requirements of part 6115.0660:

A. information on the basin and proposed source of supply or source of discharge, including facts indicating how the water will be appropriated and discharged and the proximity of the basin to the proposed source of supply or source of discharge; and

B. information on the design of any discharge facility into or out of the basin.

Subp. 2. **Commissioner's actions.** The commissioner shall evaluate and make decisions on applications based on facts supplied by the applicant and subject to the applicable procedures outlined in part 6115.0670 and the following determinations:

A. effects on public welfare of the proposed appropriation;

B. the proposed appropriation is reasonable, practical, technically feasible, and effectively accomplishes its purpose;

C. the proposed appropriation will have minimal or no detrimental effect on the basin, the proposed source of supply, or the receiving water and property of riparian owners;

D. the quality of the water of the basin or the receiving water source will not be detrimentally impaired by the appropriation; and

E. the proposed appropriation is consistent with part 6115.0220, subpart 2, item A, subitem (2), public waters permits rules.

Statutory Authority: *MS s 105.415*

6115.0710 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR DEWATERING.

Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water, shall be subject to water appropriation permit requirements, unless otherwise exempted by these parts. The commissioner shall evaluate and make decisions on such application based on applicable provisions of parts 6115.0660 and 6115.0670 and the following additional requirements:

A. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.

B. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.

C. The proposed dewatering is not prohibited by any existing law.

Statutory Authority: *MS s 105.415*

6115.0720 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR MINING AND PROCESSING OF METALLIC MINERALS AND PEAT.

Subpart 1. **Additional application information.** All applicants for permits for mining and processing of metallic minerals and peat must provide the following information in addition to the requirements of Minnesota Statutes, section 105.64 and part 6115.0660:

A. all plans and specifications regarding withdrawal, use, storage, and disposal of waters of the state;

B. details of the rates, volumes, and source of water to be appropriated and consumed in the processing, including all losses such as uncontrolled seepage, evaporation, plant losses, and discharge volumes;

C. criteria used in estimating the proposed appropriation, distribution, and discharge based on climatic averages and extremes;

D. details of the sources, rates, and volumes of water released from the mining operations involved;

E. details of the hydrologic and hydraulic impacts and effects of the operation on the watershed(s) including changes in basins, watercourses, and groundwater systems.

Subp. 2. **Commissioner's actions.** The commissioner shall analyze, evaluate, and make decisions on appropriations for mining and processing of metallic minerals based on facts submitted by the applicant pursuant to subpart 1 and part 6115.0660, subject to the conditions outlined in part 6115.0670 and the following considerations:

A. The commissioner shall direct the applicant to utilize available surplus water from preexisting mining operations or facilities, whether owned or controlled by the applicant or others, whenever feasible and practical unless justification is provided on why such practice should not be allowed. If the commissioner finds that an existing permittee has available unused water, for which there is inadequate justification, the commissioner, after notice and opportunity for hearing, shall amend the existing permit to promote better utilization of the water.

B. The commissioner shall base the allocation of water on consideration of the legal requirements for water quality, the impact of the appropriation on those requirements, and the following order of priorities of water supply sources located within reasonable distance to the mining or processing site:

(1) runoff from the mining areas;

(2) water from active mine pits and tailing basins when such water is not utilized for other purposes or operations;

(3) water from existing mining operation reservoirs where such water is not utilized for other purposes or operations;

(4) water from other mining and processing operations;

(5) water from inactive mine pits;

(6) water from streams appropriated during periods of high flows;

(7) water from groundwater sources;

(8) water collected and stored behind off-stream impoundments;

(9) water collected and stored behind impoundments on streams; and

(10) water from natural basins greater than 500 acres in size.

C. If the disposal of excess water is necessary and if any mining operation in the area has caused or will cause a substantial reduction in watercourse flow, the commissioner shall where feasible and practical require the

permittee to discharge excess water in a manner that would restore the flow. Such action shall consider the existing and anticipated use of excess water by higher priority users and must be in compliance with appropriate rules of the Minnesota Pollution Control Agency.

Statutory Authority: *MS s 105.415*

6115.0730 WELL INTERFERENCE PROBLEMS INVOLVING APPROPRIATION.

Subpart 1. **For new applications.** If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on parts 6115.0670 and 6115.0680 to 6115.0720, but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

A. The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, nonpumping and pumping levels, quality, and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

B. The commissioner may require aquifer tests or other field tests to be conducted.

C. The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretic computations using available information regarding the aquifer characteristics obtained from aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed appropriation in the area. For public supply wells only the probable interference with that portion which is used for domestic water supply is considered.

D. The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

E. The commissioner shall not issue the permit until the applicant agrees to exercise any of the following options within 30 days after written notification by the commissioner:

(1) accept a modification or restriction of the permit application to provide for an adequate domestic water supply; or

(2) submit a written agreement signed by the applicant and all parties identified under item C as having probable interference. Such agreement shall outline the measures that will be taken to ensure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in item D.

Subp. 2. **For existing permits.** If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of a water appropriation on the domestic water supplies, the following procedures shall be followed:

A. The commissioner shall provide complaint forms to the parties making the complaint, thereafter referred to as "complainant."

B. Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

C. The commissioner shall investigate and assess the complaint by:

(1) Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

(2) Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts. If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

(3) Conducting, if necessary, a field investigation.

(4) Additional hydrologic tests and evaluation shall be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter. For irrigation appropriations, the timing and conduct of such tests shall be in accordance with the provision of Minnesota Statutes, section 105.41, subdivision 1a relating to modifying or restricting appropriation for irrigation.

(5) In evaluating the probable influence of the water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

D. Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of that complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner shall, pursuant to part 6115.0750, subpart 7, unless a temporary solution is worked out, restrict or cancel the appropriation until such time as a decision has been made by either negotiation, settlement, or hearing.

E. The permittee shall within 30 days after written notification by the commissioner take appropriate action by exercising any of the following options:

(1) Requesting the commissioner to modify or restrict the permit in order to provide for an adequate domestic water supply.

(2) Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached, the settlement procedure outlined in subpart 4 shall apply; or

(3) Requesting a public hearing.

Subp. 3. **New domestic wells installed after appropriation permits have been issued.** In the event that new domestic wells, exempt from permit requirements, are installed in area of adequate ground water supplies where permits have been issued for appropriation the following shall apply:

A. It shall be the responsibility of the prospective new domestic well owner to ensure that the new domestic well will be constructed at adequate depth so that it will provide an adequate domestic water supply which will not be limited by the permitted appropriation.

B. Holders of valid permits for appropriation of water in areas where adequate water supplies are available shall not be responsible for well interference problems involving new domestic wells exempt from permit, when such exempt domestic wells are installed subsequent to authorized appropriation.

Subp. 4. **Settlement.** If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to subparts 1, item E and 2, item E, the following procedure shall be implemented:

A. The applicant or permittee shall submit to the complainant a notarized written offer including a statement that the complainant must respond in writing to the commissioner within ten days from the receipt of the offer

either accepting the offer or explaining why it is rejected. The offer must be submitted to the complainant with a copy to the commissioner within 40 days after the receipt of the written notification provided in subparts 1, item E and 2, item E based on the following:

(1) If an existing domestic well provides an adequate domestic water supply which meets state health standards, and such well no longer serves as an adequate supply because of the proposed or permitted appropriation in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality and quantity as prior to the applicant's or permittee's interference.

(2) If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the proposed or permitted appropriation in the vicinity the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

B. The complainant shall, within ten days from the receipt of the notarized written offer, respond to the commissioner in writing either accepting the offer or making argument on why the offer is not reasonable. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

C. If the offer is not accepted, the commissioner shall make a decision based on the written offer and arguments and available facts, within ten days as follows:

(1) that the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

(2) that the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify, or terminate the permit involved;

(3) that there is a need for a public hearing in which case it is ordered.

Statutory Authority: *MS s 105.415*

6115.0740 WATER USE CONFLICTS.

Subpart 1. **Conflict defined.** For the purpose of these rules a conflict occurs where the available supply of waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could in this situation endanger the supply of waters of the state so that the public health, safety, and welfare would be impaired.

Subp. 2. **Procedure.** Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for groundwater, resulting in a conflict among proposed users and existing legal users the following shall apply:

A. In no case shall a permittee be considered to have established a right of use or appropriation by obtaining a permit.

B. The commissioner shall analyze and evaluate the following:

(1) the reasonableness for use of water by the proposed and existing users;

(2) the water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required;

(3) the possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.

C. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the commissioner shall do so.

D. If conflicts cannot be resolved through modification of proposed and existing permits the commissioner shall base the decision regarding issuance of new applications and retention, modification, or termination of existing permits on the basis of existing priorities of use established by the legislature as follows:

(1) If the unresolved conflict involves users who are or would be in the same priority class, the commissioner shall require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class. The commissioner shall withhold consideration of new applications and shall, if the existing permitted appropriations endanger the supply of waters of the state, suspend or limit existing permits until a plan is approved by the commissioner.

The plan must include proposals for allocating the water which address the following: possible reduction in the amounts of appropriation so that each user would receive a proportionate amount of water for use; and possible restrictions in the timing of withdrawals so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.

If the commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

If the commissioner determines that the proposed plan is not practical or reasonable, the commissioner shall develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The commissioner shall issue new permits and amend existing permits based on that plan.

(2) If the unresolved conflict involves users who are or would be in a different priority class the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same options as provided in subitem (1).

Subp. 3. **Notice and hearing.** All actions by the commissioner shall be made after notice and opportunity for public hearing.

Statutory Authority: *MS s 105.415*

6115.0750 PROVISIONS AND CONDITIONS OF WATER APPROPRIATION PERMITS.

Subpart 1. **In general.** Water appropriation permits shall include the following provisions and conditions, unless otherwise required by law.

Subp. 2. **Term of permits.** Permits shall be issued for temporary or for long-term appropriation.

Temporary permits involve a one-time, limited life, not more than 12 months, nonrecurring appropriation of waters of the state, such as for highway construction, exploratory drilling for minerals, hydrostatic testing of pipelines and other short-term projects. Requested time extensions shall be permitted, but in no case shall the total length of time the permit remains in force exceed two years.

Long-term permits will remain in effect subject to applicable permit provisions and conditions of the permit, the law, and these parts, provided that in cases where the permittee is not the landowner of record the term of the permit shall be the same as that of the property rights or license held.

Subp. 3. **Monitoring.** Monitoring:

A. All permittees shall measure and keep monthly and yearly records of the quantity of water used or appropriated at the point of taking from each source under permit.

B. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to within ten percent of actual withdrawal.

The commissioner shall determine the method to be used for measuring water appropriated based on: the quantity of water appropriated or used, the source and location of the appropriation; the method of appropriating or using water, other facts supplied by the permittee.

The commissioner shall require flow meters to be used whenever the rate of appropriation is greater than 1,500 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used or are not necessary considering the factors contained in the two preceding paragraphs. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

C. For surface water appropriations, where applicable, the permittee shall measure flows or levels in the watercourse or basin at a specific gauge designated by the commissioner and located within the area of appropriation. The commissioner shall require permittees to pay necessary costs of establishing and maintaining such gages as provided in parts 6115.0010 to 6115.0100, rules for permit fees.

For groundwater appropriation, the commissioner, based on availability of hydrologic data on the aquifer involved, frequency and rate of pumping, and probability of conflict or well interference, shall require the permittee to measure and keep records of the water levels in each production well at reasonable times prescribed in the permit. Observation wells may be required as a condition of the permit to better evaluate hydrologic conditions and effects in areas where hydrologic data are unavailable, where probable conflict or well interference problems may occur and where such wells are required by law.

Subp. 4. **Reporting.** Annual calendar year monthly records of the amount of water appropriated or used and the water level measurements shall be recorded for each installation. Such readings and the total amount of water appropriated and used shall be reported annually to the commissioner, on or before February 15 of the following year upon forms to be supplied by the commissioner unless otherwise specified in the permit.

Such records shall be submitted with an annual water appropriation processing fee as required by Minnesota Statutes, section 105.41, subdivision 5, for each permit whether or not any water was appropriated during the year.

Additional information shall be required such as acreage irrigated, identification of water disposal sites, and amount of water discharged, when necessary for the statewide water information system (Minnesota Statutes, section 105.41, subdivision 2).

Failure to report and pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner of the violation of the permit.

No fee is required from any state agency as defined in Minnesota Statutes, section 16B.01, subdivision 2, or any federal agency.

Subp. 5. **Amendments to permits.** Amendments to permits:

A. Major modification of any water appropriation permit shall not be made before obtaining the written permission from the commissioner. Major modification includes changes such as substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

Request for amendment can be made by letter or on forms supplied by the commissioner. New applications shall be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

Requests for amendments shall be reviewed as if they were for a new application, subject to provisions of parts 6115.0600 to 6115.0800.

B. Pursuant to authority in Minnesota Statutes, section 105.44, subdivision 9, the commissioner may modify or amend any existing permits based on the following procedures and the criteria in parts 6115.0670 to 6115.0720, where applicable.

The commissioner shall notify the permittee of the intent to amend the permit. The notice will include details on modifications to be implemented by the permittee and the timing to complete the modifications.

The permittee shall respond within 30 days from receipt of the notice. Such response period shall be thereafter extended by the commissioner for good cause shown.

If no response is received in 30 days and no extension of response time is authorized by the commissioner, the proposed amendments shall be made.

The commissioner based on the permittee's response and the criteria established in these rules shall either modify the proposed amendment or adopt the original proposed amendment.

C. All amendments and modifications are made after notice and opportunity for hearing.

Subp. 6. **Transfers or assignments of permits.** If the property involving a water appropriation permit is sold, transferred, or assigned to another person, the permit may be transferred to the transferee without the necessity of reapplication, subject to the following.

The transferee shall, within 90 days after date of property sale, transfer, or assignment, or within a longer period of time allowed by the commissioner for good cause shown, submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferee intends to make major modifications to the existing permit, a new application shall be required subject to the provisions of subpart 5.

No permit is assigned except with the written consent of the commissioner.

Subp. 7. **Limitations on permits.** All permits issued by the commissioner since 1949 are subject to the provisions of Minnesota Statutes, section 105.44, subdivision 9, relating to cancellation and conditions of permits and Minnesota Statutes, section 105.45, relating to terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

The commissioner, subject to the terms and conditions of such existing permits, may modify, restrict, or cancel an existing appropriation or use until such time as a decision has been reached by either negotiation, settlement, or after a public hearing. If a permit does not contain a provision which restricts appropriation or use for the protection of safety or welfare of the people of the

state the commissioner cannot modify or restrict an existing appropriation until opportunity is provided for a public hearing and where ordered a public hearing has been completed.

Subp. 8. **Terminations.** Permits shall be terminated under the following:

A. Request by the permittee.

B. When any of its provisions are violated.

C. When the permittee sells, transfers, or assigns the property described in the permit and the transferee does not wish to continue appropriating.

D. Upon finding that the permittee has violated the provisions of any applicable laws and rules.

E. Where the permittee has not for five consecutive years, from the date of issuance of the permit, appropriated the water. Such time shall be extended by the commissioner for good cause shown.

F. When the lease or contract for deed is forfeited or canceled.

G. Permits for agricultural irrigation shall be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.

H. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety, and welfare.

I. When the commissioner deems it necessary pursuant to parts 6115.0730 and 6115.0740.

J. Any action pursuant to items B and D to I shall be subject to appropriate notice and opportunity for hearing, except as provided in subpart 7.

K. In the case of permits for mining issued in conjunction with Minnesota Statutes, section 105.64, procedures for termination shall be subject to provisions of Minnesota Statutes, section 105.64, subdivision 6.

Statutory Authority: *MS s 105.415*

6115.0760 LOCAL PERMITS.

The commissioner, pursuant to Minnesota Statutes, section 105.41, subdivision 1b, shall delegate to municipal, county, or regional level of government the authority to process and approve permit applications for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1,000,000 gallons per year, but less than 3,600,000 million gallons per year. Such delegation shall be made at the municipal, county, or regional level which means a governmental entity, or several governmental entities in combination, having authority or jurisdiction over areas of geographical extent beyond the limits of a single county, or a watershed district. The delegation by the commissioner shall be subject to the following requirements:

A. The authorized unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with part 6115.0810.

B. The review and approval of applications are consistent with the applicable provisions of these parts.

C. A formalized agreement is made and signed by the commissioner and the appropriate municipal, county, or regional level authority involved.

D. Copies of all applications and records of local actions on applications are provided to the commissioner upon receipt and action.

E. Records of water appropriation amounts and the processing fee shall be submitted by the permittee to the commissioner as required by part 6115.0750, subparts 3 and 4, and Minnesota Statutes, section 105.41, subdivision 5.

Statutory Authority: *MS s 105.415*

6115.0770 WATER CONSERVATION.

In order to maintain water conservation practices in the water appropriation and use regulatory program it is necessary that existing and proposed appropriators and users of waters of the state employ the best available means and practices based on economic considerations for assuring wise use and development of the waters of the state in the most practical and feasible manner possible to promote the efficient use of waters.

Based on data submitted by applicants and permittees and current information on best available water conservation technology and practice the commissioner, in cooperation with the owners of water supply systems, may analyze the water use practices and procedures and may require a more efficient use of water to be employed by the permittee or applicant, subject to notice and opportunity for hearing.

Statutory Authority: *MS s 105.415*

6115.0780 ABANDONMENT OF WELLS.

The permittee shall notify the commissioner prior to abandoning, removing, covering, plugging, or filling the well or wells by means of which a water appropriation was made. The commissioner shall require abandonment procedures and methods consistent with the Minnesota Department of Health rules, parts 4725.2300 to 4725.3200.

Statutory Authority: *MS s 105.415*

6115.0790 FIELD INVESTIGATIONS.

In order to fully evaluate water appropriations, the commissioner shall conduct field investigations to determine the nature and scope of the appropriation and the impact it has or will have on water and related land resources. Such field inspection shall be made in a timely fashion and shall be coordinated with one or more of the following divisions of the department: enforcement, fish and wildlife, forestry, minerals, lands, and parks and recreation. A fee shall be charged for field inspections subject to rules for permit fees, part 6115.0080.

Statutory Authority: *MS s 105.415*

6115.0800 INFORMATION ON APPROPRIATION PERMIT LAWS.

The applicants or existing permittees shall, upon request to the commissioner, be furnished copies of applicable portions of the law or synopsis, where they exist, relating to their proposed or existing appropriation.

Statutory Authority: *MS s 105.415*

6115.0810 WATER APPROPRIATION AND USE MANAGEMENT PLANS.

Subpart 1. **In general.** In order to address the provisions of Minnesota Statutes, sections 105.403, 105.405, and 105.41, subdivision 1a, the commissioner, in cooperation with other state and federal agencies, regional commissions and authorities, local governments and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional, and local plan relating to water appropriation and use.

Subp. 2. **Criteria and procedures.** Since the availability, distribution, and utilization of waters of the state and the character and use of related land resources vary considerably throughout the state, a comprehensive water appropriation management planning process must be based on these considerations and according to the following principles and procedures:

A. Water appropriation management plans should be prepared for specific definable areas of the state on consideration of:

(1) The hydrologic and physical characteristics of the water and related land resources for which a management plan is necessary. The area must be of sufficient size and areal extent so that the interrelationship of geohydrologic and climatic factors can be adequately defined and managed.

(2) The determination by the commissioner of the need for establishment of a water appropriation management plan for the waters of the state within a specific definable area based on:

(a) areas where development of the waters of the state is, or is likely to, increase considerably within the next five to ten years;

(b) areas where severe water availability problems exist or are soon likely to exist;

(c) areas where there are adequate facts and available geohydrologic data relating to the availability, distribution, and use of the waters of the state and where there is local interest in establishing water appropriation management plans.

B. Upon establishment of the need for a water appropriation management plan pursuant to item A, the commissioner shall establish a management planning process including procedures, a public participation process, and development of a planning team consisting of representatives of the department, permittees, any other interested, concerned, and involved government or citizen group listed in subpart 1 to review and cooperate in preparation of the plan.

Subp. 3. **General requirements and contents of plans.** Every water appropriation plan should, at a minimum, include:

A. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes. This will provide essential background information for establishing protected flows and protection elevations, part 6115.0670, subpart 3, item B, subitem (6).

B. An evaluation of data on stream quality and flows, lake water quality and levels, groundwater quality and levels, and climatic factors. This will provide essential data useful to the applicant and the commissioner in permit application considerations, parts 6115.0660 to 6115.0720.

C. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area. This will facilitate the determinations necessary under part 6115.0670, subpart 2, item A, subitem (2).

D. An evaluation of the problems and concerns relating to use of the waters within the area.

E. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water. See parts 6115.0660, subpart 3, item F; 6115.0690, subpart 1, item G; and subpart 2 of this part.

F. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain management, shoreland management, water surface use management, water quality management, soil and water conservation management, and agricultural land management.

Statutory Authority: *MS s 105.415*

In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

Subp. 3. **Limited state liabilities.** The establishment of a lake improvement district shall not impose any liability upon the state of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

Subp. 4. **Rights of lake improvement districts.** Nothing in these parts shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this state.

Subp. 5. **Inspections.** The commissioner shall be given prompt access to and inspection of all records, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permit and to ensure protection of the public health, safety, and welfare. The commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

Subp. 6. **Compliance with other laws and water management policies.** Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

Subp. 7. ***Compliance by preexisting lake improvement districts.*** Within one year following promulgation of these parts, lake improvement districts in existence prior to the promulgation of these rules shall submit to their county board and to the commissioner a certified copy of a document containing the information required by part 6115.0970. This document shall also contain a report on the past and current activities and financial condition of the district.

The commissioner shall review the document and prepare an advisory report stating his findings as to whether the district is consistent with these parts. The report may contain such recommendations as the commissioner determines is necessary to bring the district into compliance with these parts.

Within 60 days following the official filing of the commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give ten working days' notice to the commissioner of the time and place where it will convene to consider his report. If the commissioner or his representative does not appear, the report shall be publicly read into the record.

Statutory Authority: *MS s 378.41*

WATERCOURSES

6115.1000 STATUTORY AUTHORITY; EFFECTIVE DATE.

These parts are of no effect and null and void unless they are authorized and made valid and enforceable by an act of the 1976 Minnesota legislature establishing an accelerated program of inventorying, classifying, and designating waters of this state, and prescribing these parts by making specific reference to them. If such an act becomes law, these parts are effective on the effective date of that act, and shall remain in effect for each county until the designation and classification of public waters in that county pursuant to the act and these parts has been completed. Any procedure specified herein shall be modified as necessary so as not to conflict with the language of the act.

Statutory Authority: *MS s 84.415*

6115.1010 PURPOSE.

These parts supplement the above-referenced act by providing additional procedures and criteria for the identification and classification of public waters.

These parts also provide interim guidelines for making public waters determinations as the need arises prior to completion of the process described in the act.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1020 DESIGNATION OF WATER BASINS AND WATERCOURSES AS PUBLIC WATERS.

Only those surface waters of the state which are confined may be considered for designation as public waters. There are two types of confining containers, water basins and watercourses. The definitions of the two types relate only to their ability to contain confined waters. The determination of whether or not the confined waters are public waters is based on the criteria in Minnesota Statutes, sections 105.37, subdivision 6, and 105.38, and on the further delineation of those criteria in these parts.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1030 DEFINITION OF WATER BASIN.

An enclosed basin normally filled or partly filled with water may be defined as a water basin. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

All water basins have a natural fluctuation in water levels. Water basins with intermittent surface water inflow and little groundwater inflow fluctuate through great ranges in levels from very low to extremely high. Other water basins which have perennial streams as inlets and outlets may fluctuate within a narrow range. Water basins which receive a major portion of their water supply from groundwater, springs, and seeps will generally have fairly uniform levels as long as the groundwater supply to the basin remains somewhat constant.

Water basins may include all natural enclosed depressions which have substantial banks normally containing water and which are discernible on aerial photographs taken during normal conditions. This includes all bodies of water, except streams, which are shown within the meander lines on plats of the general lake office surveys.

Water basins constantly undergo changes in size, depth, and shape. The rate and type of change in a given water basin is dependent upon several factors including: the climatic and topographic conditions; the nature of the soil or rock materials which underlie the water basin and cover the basin watershed; the biological environment; the physical configuration; and the nature and extent of artificial and natural drainage within the watershed of the water basin.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1040 DEFINITION OF WATERCOURSE.

There are three kinds of watercourses:

A. natural watercourses may be defined as any natural channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks, but under low and normal flows water is confined within the channel. A watercourse may be intermittent or perennial. Natural, as defined herein, means in a state provided by nature without deepening, straightening, or widening.

B. an altered natural watercourse is a former natural watercourse which has been affected by man-made changes resulting in straightening, deepening, and widening of the original channel. Altered natural watercourses

have been altered as the result of legally authorized changes under provisions of Minnesota Statutes, chapter 106, public drainage laws, or prior applicable laws, or as the result of private actions without any public drainage procedures.

C. an artificial watercourse is a watercourse which has been artificially constructed by man where there was no previous natural watercourse.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1050 WETLANDS DEFINED.

Wetlands types referred to in these parts are as described in Circular 39, Wetlands of the United States, published by the United States Department of Interior.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1060 PUBLIC WATERS; WATER BASINS AND WATERCOURSES.

Subpart 1. **Mandatory designation.** The following water basins shall be public waters:

A. all water basins which have been classified as public waters under the Shoreland Management Act (Minnesota Statutes, section 105.485) and which have been specified as public waters under county and municipal shoreland zoning ordinances, subject to a determination that such water basin is not permanently dry or has not reverted to wetland type 1 or 2;

B. all meandered lakes, except those which have been legally drained;

C. all water basins designated by the commissioner for management for a specific purpose pursuant to applicable laws, for example, trout lakes, and

D. all water basins located within and surrounded by publicly owned lands, including, but not limited to state parks, scientific and natural areas, and wildlife management areas.

Subp. 2. **Water basins subject to additional criteria.** The following water basins not listed in subpart 1 may be public waters, subject to application of the statutory criteria of Minnesota Statutes, sections 105.37, subdivision 6 and 105.38, as further explained in part 6115.1150:

A. in unincorporated areas, water basins greater than ten acres in area, excluding type 1 and type 2 wetlands;

B. in incorporated areas, water basins of any size;

C. any water basin which a county or municipality asks to be considered for designation as public waters; and

D. any water basin which the private owners of all the land around the basin ask to be considered for designation as public waters.

Subp. 3. **Watercourses as public waters.** Any watercourse may be public waters which fits the criteria of Minnesota Statutes, sections 105.37, subdivision 6, and 105.38, as further explained in part 6115.1150.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1070 INVENTORY AND DESIGNATION OF WATER BASINS AS PUBLIC WATERS.

Subpart 1. **Preliminary designation procedures.** The commissioner, using an analysis of the data on file and a review and analysis of aerial photos, shall make preliminary evaluations of those water basins which may be considered for inclusion as public waters within each county.

The commissioner will prepare maps for each county showing the location of all water basins in each county originally inventoried in Bulletin 25, An Inventory of Minnesota Lakes published in 1968 by the Division of Waters, Soils and Minerals, and the location of any other water basins of any size in

incorporated areas and of ten acres or more in unincorporated areas not listed in the bulletin but determined from the most recent available detailed aerial photographs of the county, not taken during a period of flooding, or drought. The use of the photos is only to determine if a basin exists and not to prove the basin is public waters solely on the photographic data.

The commissioner shall designate on the map, as a preliminary evaluation, those water basins which are considered to be public waters, utilizing the criteria specified in part 6115.1150. This preliminary designation will be supported by explanations of the basis for making the designation of each water basin as public waters. A listing of those basins, a map showing their general location in the county, and an explanation of the reason for the preliminary selection of the water basin as public waters will be submitted to those local governmental agencies with jurisdiction in the area where the water basin is located for their review, analysis, and comment. Local governments may add any water basin for consideration, regardless of the size of the water basin.

Subp. 2. **County review; field investigations.** Where the county disagrees with the preliminary designation of the commissioner, the commissioner shall undertake discussions with the county in order to resolve differences. Where necessary, he may initiate a detailed field investigation.

A field investigation, when necessary, may be made by the Department of Natural Resources with full cooperation and consultation with local governmental authorities and any of their designated representatives in order to assure maximum input from the local governmental authorities and to allow maximum discussion and interchange of facts regarding the area involved, utilizing the criteria specified in part 6115.1150.

At a minimum, the commissioner shall seek assistance in making field investigations from the following:

A. counties and other local governmental agencies and their representatives;

B. soil and water conservation districts;

C. watershed districts, if there are any organized districts, located in the area where the water basins are situated;

D. any U.S. governmental agencies which may be willing to assist in the field investigation in a fact-finding capacity, and

E. affected property owners and parties who may wish to contribute technical expertise.

Subp. 3. **Further procedures.** The commissioner shall make maximum efforts to resolve any problems involving designations after completion of field investigations. Further procedures for designating water basins as public waters are specified in the act prescribing these parts.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes, section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 199, section 17.

6115.1080 INVENTORY, DESIGNATION, AND CLASSIFICATION OF WATERCOURSES AS PUBLIC WATERS.

Subpart 1. **Access to maps.** The commissioner will furnish each county with copies of the latest available U.S. Geological Survey topographic (quadrangle) maps for use in making a preliminary designation and classification of watercourses which may be public waters within the county. Counties may use any other available maps and information in making the inventory. It is recommended that counties enter into agreements with soil and water conservation districts and watershed districts, where existent, in order to expedite the inventory and provide maximum local assistance and cooperation.

Subp. 2. **Use of maps by counties.** It is recommended that counties use, as official work maps, the U.S. Geological Survey topographic (quadrangle) maps of the county, and where such maps are not available, the use of similar scale aerial

photographic blueline prints. These maps and prints form the best available base for showing the location and extent of the various watercourses. It should be noted that the maps may not and often will not contain all of the watercourses, especially since the maps were prepared at various times and some are quite old.

The commissioner will furnish each county with reproducible county maps at a scale of one inch equals one mile for use as an official designation map for final watercourse designation and classification.

Each county shall indicate on the official map the location of all watercourses, natural, altered, and artificial as defined in parts 6115.1020 to 6115.1050.

Counties shall include the location and extent of all these watercourses and identify them as to their character by using the following map symbol along the watercourse extent: natural watercourses, solid lines; altered natural watercourses, dashed lines; artificial watercourses, dotted lines.

Each county shall indicate on the official map the name of the natural watercourse or the number and designation of the altered natural or artificial watercourse.

Subp. 3. **Preliminary designation by county.** The county shall designate on the map, as a preliminary evaluation, those watercourses which it considers to be public waters, utilizing the criteria specified in parts 6115.1060 and 6115.1150. The county shall classify each public watercourse as to the degree of regulation which shall apply to each watercourse. The criteria for each class, and the degree of regulation which the commissioner shall apply to each class, are as follows:

A. Class I public watercourses. Natural watercourses serving as major drainage outlets, or major tributaries to those outlets, which are capable of serving a number of beneficial public purposes. Examples include the Rainy River, Mississippi River, Red River, Root River, Blue Earth River and the Rum River. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses. Examples might include: Nine Mile Creek, Hennepin County; Minnehaha Creek, Hennepin County; Baptism River, Lake County; and Spring Creek, Goodhue County. Permits shall be required under Minnesota Statutes, section 105.42, for all activities which change the course, current, or cross-section of Class I public watercourses and under Minnesota Statutes, section 84.415, for all utility crossings thereof.

B. Class II public watercourses. Natural watercourses serving as tributaries of Class I watercourses which are often perennial streams serving more than one beneficial public purpose. Permits shall be required under Minnesota Statutes, section 105.42, for all activities which change the course, current, or cross-section of Class II public watercourses and under Minnesota Statutes, section 84.415, for all utility crossings thereof.

C. Class III public watercourses. Smaller natural watercourses and altered natural watercourses not constructed under Minnesota Statutes, chapter 106, which are often intermittent streams serving at least one beneficial public purpose.

Permits shall not be required under Minnesota Statutes, section 84.415. Nor shall permits be required under Minnesota Statutes, section 105.42, except for the following types of activities on Class III public watercourses:

(1) any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class III public watercourse;

(2) construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum storage capacity (based on the national dam inspection program);

(3) any diversion of water from a Class III public watercourse into a different watershed which is not part of the same drainage basin;

(4) any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

D. Class IV watercourses. These shall include any watercourses in existence at the time of inventory which are artificial watercourses and altered natural watercourses, constructed under the provisions of Minnesota Statutes, chapter 106, or prior laws, or as the result of private actions without any public drainage proceedings.

Permits shall not be required under Minnesota Statutes, section 84.415. Nor shall permits be required under Minnesota Statutes, section 105.42, except for the following types of actions on Class IV watercourses:

(1) any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV public watercourse;

(2) construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and or impounding 50 acre-feet or more of water at maximum storage capacity (based on the national dam inspection program);

(3) any diversion of water from a Class IV public watercourse into a different watershed which is not part of the same drainage basin; and

(4) any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

Counties shall indicate on the official designation map their preliminary classification of watercourses as to Class I, II, III, or IV.

Upon completion of the preliminary classification of watercourses delineated by the county, the county will submit the preliminary inventory and classification to the commissioner by indicating the classification review, evaluation, and comment.

Subp. 4. **Commissioner review.** Where the commissioner disagrees with the preliminary designations and classifications of the county, he shall undertake discussions with the county in order to resolve differences. He may initiate field investigations of the sort described in part 6115.1070, subpart 2.

Subp. 5. **Further procedures.** The commissioner shall make maximum efforts to resolve any problems involving designations and classifications after completion of discussions and field investigations. Further procedures for designating watercourses as public waters and classifying them are specified in the act prescribing these parts.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes section 105.391 subdivision 8 has been repealed by Laws 1979 chapter 199 section 17.

6115.1090 INTERIM PROCEDURES AND CRITERIA FOR MAKING PUBLIC WATERS DETERMINATIONS.

Subpart 1. **Purpose.** In order to provide a systematic transition from the present method for dealing with determinations of public waters and the program for statewide delineation on a county-by-county basis, it is necessary that interim procedures for classifying public waters be adopted. It is intended that these procedures be especially applicable in the agricultural areas of the state and where, because of the need for agricultural land drainage, there are major problems involving these waters.

Subp. 2. **Procedure.** Any person contemplating a change in the course, current, or cross-section of a water basin or watercourse which may be one of the kinds described in part 6115.1060 shall consult with the nearest regional office of the Department of Natural Resources to find out if it is public waters,

or ask county or municipal officials to contact the department for him or her. Except during periods when climatic conditions prevent adequate field investigations, the commissioner shall have not to exceed 60 days from the date of request by the party or county or municipality to determine whether or not the basin is public waters, and if the determination is not made within that time, then the water basin is not public waters for purposes of the particular change contemplated by the particular party, or the watercourse is Class III, or is Class IV if it is a part of a legal drainage system.

Subp. 3. **Criteria.** The commissioner's interim criteria for determining whether or not a water basin or watercourse is a public water are those specified in part 6115.1060. His criteria for classifying watercourses are those specified in part 6115.1080, subpart 3.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes section 105.391 subdivision 8 has been repealed by Laws 1979 chapter 199 section 17

6115.1100 INTERIM CRITERIA FOR COMMISSIONER'S PERMITS FOR PUBLIC DRAINAGE PROJECTS.

Subpart 1. **New projects.** A drainage project undertaken under the authority of Minnesota Statutes, chapter 106 or 112 which will alter the course, current, or cross-section of a water basin whose status as public waters or not public waters has not yet been determined pursuant to part 6115.1070, or which will alter the course, current, or cross-section of a watercourse whose status and classification have not yet been determined pursuant to part 6115.1080, may be limited by the commissioner's authority under Minnesota Statutes, sections 105.42 and 106.021, only if the waters to be affected are determined to be public waters pursuant to 6115.1090 and then only if the project will substantially affect such waters. "Substantially affect" means partly or wholly drain a water basin; channelize a natural watercourse.

Subp. 2. **Repairs and improvements.** Normal repairs and improvements in existing legal drainage systems undertaken under the authority of Minnesota Statutes, section 106.471 or 106.501, or chapter 112, should not involve any requirements for regulation by the commissioner except for substantial effects similar to those for new projects as set forth in subpart 1.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes section 105.391 subdivision 8 has been repealed by Laws 1979 chapter 199 section 17

6115.1150 CRITERIA FOR DETERMINING WHETHER A WATER BASIN OR WATERCOURSE IS A PUBLIC WATER.

PARAMETER	CODE	REASON
Nutrient Entrapment		
	N	1. Proximity to lakes and streams and relationship to surface drainage system.
		2. Chemical quality of waters and other adjacent lakes and streams. (Requires a laboratory analysis of samples collected.)
		3. Vegetation characteristics and analysis of chemical composition of vegetation. (Requires a laboratory analysis of samples collected.)
		4. Estimated nutrient assimilation load of the water area involved. (Based on an analysis and evaluation of chemical quality analysis samples.)
		5. Analysis of the area as a sediment collection basin to prevent sediment pollution in nearby lakes or streams.
Wildlife Habitat		
	W	1. Wetland characteristics in regard to vegetation types and value of vegetation as feeding, nesting, or rearing areas or as protective cover.
		2. Relationship of this area to other areas in the county and in the surrounding region. What kind of cover is available? Is this a unique area?
		3. What evidence is available regarding the kinds and numbers of animals that use the area. What is the importance of these animals?
		4. What would be the impact on fish and wildlife of the waters involved if the area was destroyed as a wetland?
		5. Is it within an existing water bank program or is there a firm proposal to include it in a water bank program subject to fund availability.
		6. Is the water within or directly adjacent to a state or federally acquired wildlife management area? Are there plans for acquiring the area as a wildlife area within the immediate future (i.e., Are there files or records which show the area is planned acquisition within the present biennium subject to fund availability).
		7. Is there available eye witness testimony to show the water is used by a number of animals? What are the names and assumptions of observers?
Recreational Activities		
	R	1. Is the area readily accessible to the public? How is public access granted?
		2. Are other characteristics of the area adequate for certain uses including but not limited to: hunting, fishing, swimming, boating? Is there evidence to show the area is used for any of the above purposes? If so, by how many persons and for what periods of time?

3. What is the potential of the area for public recreational use, in regard to possible future availability and use both locally and in the county and region?

4. Is there any eye-witness testimony available regarding public use of the area? What are names, addresses and occupations of observers?

Flood Water Retention

F 1. What is the damage occurrence and frequency adjacent to and downstream from the waters involved? And what is the character and value of lands involved and extent of damages? (This determination may include information from aerial photos, county flood maps, soils evaluations, eye-witness accounts, flood marks and other engineering determinations.)

2. What are the hydrologic and topographic relationships between the waters involved and the areal drainage system?

3. What percentage of floodwaters of the local drainage system would be retained within the waters involved if the waters were used as floodwater retarding and retardation basin? What effect would the loss of the water involved have on local flooding conditions?

Scientific and Natural Areas

H 1. Does the water area involved have an inherent natural value for: a living museum; site for scientific study; an area for teaching natural history and conservation; a habitat for rare and endangered species of plants and animals? If so, would the area be designated as a Scientific and Natural Area under provisions of Minnesota Statutes, section 84.033 and acquired by gift, lease, easement, or purchase, if funds were available.

Public Navigational Purposes, other than recreational

P 1. Is there any evidence to show the waters involved are important for public navigational purposes, other than recreational? If so, describe the characteristics which make the area important including depth, area extent and type of navigational use? Are there any records of such navigational use? By whom? How often?

Water Supply

S 1. Is there any evidence to show the waters involved are important sources of water supply? If so, for what uses and how is the water obtained? Who owns the lands around the waters involved? How long has the water been used for a water supply for a particular purpose?

Underground Water Recharge

G 1. What are the local groundwater-surface water relationships in and around the waters involved?

2. What are the shallow ground water levels? (i.e., depth to water table?)

3. What are the soils of the area and underlying the waters involved? Is this area part of a larger recharge area? If so, what significance would loss of the waters involved have on the recharge?

Surrounding Land Character and Potential

I. 1. What is the nature of the land surrounding the waters involved? What is the suitability of the land and beds of the waters for agricultural use in regard to soils, slopes, and other characteristics?

2. What would the impact be on agricultural values and cropping practices if the waters were not allowed to be drained for agricultural use.

Statutory Authority: *MS s 105.391 subd 8*

NOTE: Minnesota Statutes section 105.391, subdivision 8 has been repealed by Laws 1979, chapter 190, section 17.

STATE WATER BANK PROGRAM

6115.1200 STATUTORY AUTHORITY AND PURPOSE.

These parts are promulgated under the authority of Minnesota Statutes, sections 105.392, subdivision 2, and 105.415. Their purpose is to implement and make specific the state water bank program and the indemnification process established by Minnesota Statutes, section 105.391, subdivision 3, for the purpose of compensating farmers for not converting certain kinds of wetlands to cropland.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

6115.1210 DEFINITIONS.

Subpart 1. **Adjacent land.** "Adjacent land" means any lands abutting a basin that is eligible for inclusion in the state water bank program.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources or his designated agents.

Subp. 3. **Drain.** "Drain" means to conduct drainage activities that will remove or reduce the surface water from the basin. Acts constituting draining include, but are not limited to pumping, lowering the outlet, enlarging the outlet, tiling, or reducing the amount of water entering the basin. (Drainage does not include temporary water level reduction for conservation purposes.)

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CHAPTER 144, STATE COMMISSIONER OF HEALTH

Note: Only portions of this statute are indexed since very little of it is of interest to emergency water planners.

MINNESOTA STATUTES

CHAPTER 144.381 SAFE DRINKING WATER ACT OF 1977

CHAPTER 452 MUNICIPAL OWNERSHIP

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Note: Only the portions that affect emergency water planning is presented in this volume.

MINNESOTA RULES

CHAPTER 4720, PUBLIC WATER SUPPLIES

Note: Only portions of these rules are indexed since only portions of it is of interest to emergency water planners.

CHAPTER 4725 WATER WELL CONSTRUCTION CODE

Note: Only a portion of the code is indexed since few parts deal with essential issues involved in emergency water planning.

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